



USAID | **AFGHANISTAN**
FROM THE AMERICAN PEOPLE

LAND PRIVATIZATION AND LAND TITLING IN AFGHANISTAN

EVALUATION OF THE LAND COMPONENT OF THE
USAID-FUNDED AFGHANISTAN STATE OWNED
ENTERPRISE PRIVATIZATION, EXCESS LAND
PRIVATIZATION AND LAND TITLING ACTIVITY



APRIL 2006

This publication was produced for review by the United States Agency for International Development. It was prepared by ARD, Inc.



AUTHORS:

Dr. Norman Singer, Land Lawyer and Team Leader

Dr. Mark Marquardt, Land Administration Specialist

Ms. Karin Haldrup, Land Titling and Registration Specialist

Ms. Sharon Miller, CPA

COVER PHOTO:

Customers requesting deed information in a Makhzan (deed archive) in Kunduz, Afghanistan.

Andre Hernandez, Emerging Markets Group (EMG)

LAND PRIVATIZATION AND LAND TITLING IN AFGHANISTAN

EVALUATION OF THE LAND COMPONENT OF
THE USAID-FUNDED AFGHANISTAN STATE
OWNED ENTERPRISE PRIVATIZATION, EXCESS
LAND PRIVATIZATION AND LAND TITLING
ACTIVITY

APRIL 11, 2006

DISCLAIMER

The authors' views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

CONTENTS

- Acronyms..... i**
- Executive Summary iii**
- 1.0 INTRODUCTION 1**
 - 1.1 BACKGROUND..... 1
 - 1.2 METHODOLOGY..... 1
 - 1.3 MEETING USAID OBJECTIVES 2
- 2.0 FINDINGS AND OBSERVATIONS 3**
 - 2.1 OVERALL PROGRAM PERFORMANCE 3
 - 2.1.1 Project Administration..... 3
 - 2.1.2 Land Policy and a Vision for Land Administration and Management..... 4
 - 2.2 THE PROJECT AND EMG ACTIVITIES 7
 - 2.2.1 Land Titling/One-Stop-Shop (Task A) 7
 - 2.2.2 Spatial Information - Cadastre/AGCHO (Task B)..... 8
 - 2.2.3 Land Titling Database (Task C)..... 9
 - 2.2.4 Legal Consolidation (Task D) 11
 - 2.2.5 Informal Settlement Conference (Task E) 13
 - 2.2.6 Establish Pilot Titling Project (Task F)..... 13
 - 2.2.7 Pilot Dispute Resolution Project (Task G) 15
 - 2.2.8 Women's Legal Defense Program (Task H)..... 16
 - 2.2.9 Reorganization of the Makhzan Deed Archives (Task I)..... 16
 - 2.2.10 Capacity Building 19
 - 2.2.11 The Privatization of State Owned Enterprises..... 20
 - 2.3 PROGRAM INTEGRATION 21
 - 2.3.1 Government of Afghanistan 21
 - 2.3.2 EMG Collaboration with other USAID Initiatives 23
 - 2.3.3 Integration with other Donor Agency Initiatives 23
 - 2.3.4 Collaboration between the EMG Program Components 1 and 2 24

3.0 ISSUES AND RECOMMENDATIONS	25
3.1 GENERAL RECOMMENDATIONS	25
3.1.1 Vision	25
3.1.2 Program Design.....	25
3.1.3 Communication/Administration	25
3.1.4 Program Implementation	25
3.1.5 Institution Building.....	26
3.2 SPECIFIC RECOMMENDATIONS BY ACTIVITY	26
3.2.1 Administration	26
3.2.2 Land Titling/The One-Stop-Shop.....	26
3.2.3 Spatial Information Recommendations.....	27
3.2.4 Land Titling Database Recommendations.....	27
3.2.5 Legal Consolidation Recommendations	28
3.2.6 Pilot Titling Project	28
3.2.7 Pilot Dispute Resolution Project	29
3.2.8 Reorganization of the Makhzan Deed Archives	29
3.2.9 Capacity Building and Outreach Recommendations	29
3.2.10 Privatization of State Owned Enterprises	30
3.2.11 Program Integration	30
3.3 GENERAL CONCLUSION	30

ANNEXES:

ANNEX 1: Bibliography of Documents Consulted	33
ANNEX 2: List of Persons Contacted or Interviewed	37
ANNEX 3: Scope of Work	39
ANNEX 4: Questions Posed by Eamon Doran for the Evaluation Team	44
ANNEX 5: List of the Relevant Property Laws, Decrees and Regulations Reviewed by the Assessment Team.....	51
ANNEX 6: LTERA Project Offices and Staff	54
ANNEX 7: EMG Report on Their Collaboration with Other USAID Projects, Other Donor Projects and the Government of Afghanistan	55
ANNEX 8: Initial Chart of Findings and Accomplishments	58
ANNEX 9: Strategy Paper for Years Two and Three	61

ACRONYMS AND ABBREVIATIONS

AGCHO	Afghan Geodetic and Cartographic Head Office
AISA	Afghanistan Investment Support Agency
AMLAK	Department of Landownership of the Ministry of Agriculture, Livestock and Food
EMG	Emerging Markets Group
CDC	Community Development Council
GoA	Government of Afghanistan
I-ANDS	Interim Afghanistan National Development Strategy
IARCSC	Independent Administrative Reform Civil Service Commission
ISAF	International Security Assistance Force
KURP	Kabul Urban Reconstruction Project
LIS	Land Information System
LTERA	Land Titling and Economic Restructuring in Afghanistan
MoA	Ministry of Agriculture, Livestock and Food
MoF	Ministry of Finance
MoJ	Ministry of Justice
MoI	Ministry of Interior
MUDH	Ministry of Urban Development and Housing
NGA	National Geospatial-Intelligence Agency
NSDI	National Spatial Data Infrastructure
OTF	Over the Frontier
PRR	Priority Reform and Restructuring
SOE	Stated Owned Enterprise
SOW	Scope of Work
TOR	Terms of Reference
UNDP	United Nations Development Programme
UN-HABITAT	United Nations Habitat

EXECUTIVE SUMMARY

A mid-term evaluation of the Land Titling and Economic Restructuring in Afghanistan (LTERA) Project has been commissioned by USAID in order to assess how successfully the contractor Deloitte, Touche, Tohmatsu, Emerging Markets Group, LTD, and the subcontractor, Terra Institute, have performed in moving towards the goals of (1) Tenure Regularization; (2) Property Registration; (3) Cadastral Mapping/Parcel Indexing; (4) Land Law Development; and (5) Capacity Building. The evaluation looked specifically at some of the following subtasks:

- Simplification of title transfer (one-stop-shop);
- Developing databases for recording titles;
- Consolidation of laws;
- Public education;
- Pilot titling activities;
- Pilot dispute resolution activities; and
- Property deed reorganization.

There have been criticisms with respect to lack of vision of where the project is heading and how individual components of the project fit into that overall vision. Many discussions were held about specific aspects of the work plan which, as the evaluation proceeded, turned out not to be properly appreciated or understood. One of the major general recommendations is to work on the vision of the project in order to create a better understanding of exactly where it is heading in the immediate future and what result is intended to be left behind for the Government of Afghanistan (GoA). It is recommended that outside assistance be brought in to help with the development of this vision. In addition, it is felt that inadequate attention has been paid to the development of a land policy. Initial activities have been discussed by the project, but it is recommended that this activity be addressed more directly in the immediate future.

Two other major recommendations for the project are as follows:

- First, review the project's administration and communications (both internal and external) in order to change the nature of the "top-down" style that appears to have prevailed. In order to support the changes that need to be made in administration and communication, it is recommended that more information on the project in general be made available to the staff, both foreign and local, so that there is a better understanding of the day-to-day workings of the project and the focus of longer-term goals.
- Second, clarify the vision of the project. There appears to be a communication lapse, or perhaps a lapse in understanding, as to what the ultimate goals are in terms of the land titling activity. All three members of the Evaluation Team, who were working with the land titling component of the project, understood that the project intended to create a parcel based title registration system out of the deed recording system that existed at present. The evaluators further understood that there were a number of preliminary steps necessary before the actual system would be ready to be put in place. These include cleaning up the deed registries; capturing the data that was in the deeds, where possible; assisting with the upgrade of the cadastral mapping offices; linking spatial information with the deed records information; and ultimately completing the basic tasks that assist in creating a functioning registration system. Apparently, the Evaluation Team was incorrect in this understanding—creating a

parcel based registration system was not part of the project's goals. This miscommunication by project staff led the Evaluation Team to question what the ultimate goal of the titling component of the project is as well as the sustainability of the goals being pursued.

It is not entirely clear what the project is going to do with all the data that they are gathering and assembling into a database, nor is it clear how the component parts of the finished system (the registers and the spatial data) will exist and interact. It is clear that the cadastral offices will ultimately be upgraded, the maps will be linked to the data which is found in the deeds, and a database will be created from the information that is being gleaned from the photographing of the deeds from the reorganized Makhzans (the deed archives). It is not clear from the project documentation, however, what the final anticipated result will be. The project personnel repeated that the goal is to be a functioning title registration system. Whether the actual goal is a title registration system or something else was still in question at the end of the evaluation. Box C in this report provides a pictorial image of what a title registration system looks like. The evaluation recommends that project personnel review this image and make an educated final choice as to what they are working towards: (a) a title registration system; (b) a recording system in which the deed records are linked to the spatial data; or (c) something else yet to be determined, perhaps some intermediate step before a parcel based title registry is created.

The evaluation of the privatization of the State Owned Enterprises (SOEs) is going slower than anticipated, but it is felt that there are certain issues that need to be faced in order to ensure that the privatization of these enterprises is done in the most efficient way possible in order to provide the greatest benefit to the State. It is felt that valuation of the land involved, plus certain procedural decisions, must be made before privatization can move forward in an efficient manner. In addition, the privatization component of the project is more heavily staffed than the title registration component. This is more striking in light of the fact that the title registration component is much more complicated and requires more active personnel given the extent of the tenure problems that exist in present-day Afghanistan. Therefore, more emphasis is recommended for the land titling component with a potential reduction in staff in the SOE component.

The inquiry aimed to determine what has been accomplished by the contractor for this activity. The sense of the Evaluation Team is that, despite deficiencies, the project has begun to move in the appropriate direction. The reorganization of the Makhzans, for example, was one of the more successful activities. However, there were also activities that needed more attention as quickly as possible. For example, it was felt that urban and rural issues of land titling are not in balance and more effort should be put into the rural problems of registration, even though the problems in the urban sector, with enormous informal settlements, are severe. Likewise, the attention given to the cadastral offices is lagging. This is serious if the goal is to ultimately create a linked registration (or recording) administrative system. Attention has to be focused on the problem areas. The body of the report, especially Section 5.0, provides many general and specific recommendations that need attention.

1.0 INTRODUCTION

1.1 BACKGROUND

A mid-term evaluation of the Land Titling and Economic Restructuring in Afghanistan (LTERA) Project was commissioned by USAID in order to assess how successfully the contractor Deloitte, Touche, Tohmatsu, Emerging Markets Group, LTD, and the subcontractor, Terra Institute, have performed in moving towards the goals as set out by the project document to realize: (1) Tenure Regularization; (2) Property Registration; (3) Cadastral Mapping/Parcel Indexing; (4) Land Law Development; and (5) Capacity Building. The Evaluation Team was specifically asked to look at the following subtasks:

- Simplification of title transfer (one-stop-shop);
- Developing databases for recording titles;
- Consolidation of laws;
- Public education;
- Pilot titling activities;
- Pilot dispute resolution activities; and
- Property deed reorganization.

1.2 METHODOLOGY

The Evaluation Team conducted a pre-mission literature review covering Emerging Markets Group (EMG) reports, Government of Afghanistan (GoA) policy documents, and previous evaluation reports of the EMG Program. A list of documents reviewed is provided in Annex 1. The results of the literature review allowed the Evaluation Team to identify existing and emerging policy and institutional issues relevant to the Scope of Work (see Annex 3). The team sought to balance issues addressed in the evaluation among the political economy of land reform, privatization, program integration, and coordination as well as technical issues related to land titling and the protection of property rights.

Following arrival in Kabul, and briefings with EMG and the USAID management team, the evaluators identified key informants from both primary and secondary stakeholders covering GoA Ministries, municipal departments, provincial and district administration offices, donors, and independent experts. Key informant analysis allowed the team to outline key problems as well as to triangulate and corroborate findings. The list of key interviews conducted is provided in Annex 2.

The Evaluation Team also conducted two field missions, including the informal settlement pilot project in Kabul District 7, and a one-stop-shop pilot project in Ghazni City to assess the implementation of core components of the program. The field trips allowed the team to gain insight both into the complexities of program execution as well as the context within which the reform program is being conducted.

Following the completion of the mission, a final debriefing was conducted with U.S. Embassy and USAID staff to present provisional recommendations for discussion as a foundation for building consensus within the U.S. administration and EMG with regard to emerging issues and proposed corrective measures. Finally, the Evaluation Team conducted a debriefing with EMG management, focusing on key issues and recommendations.

1.3 MEETING USAID OBJECTIVES

These project activities are related to USAID’s objectives to promote effective economic growth and to provide security of tenure for property holders in Afghanistan. The objectives of the LTERA Project relate to:

Component 1: “To assist the government in securing property registration, simplifying land titling procedures, and clarifying the legal framework supporting property rights so as to assist the GoA to create and implement a cost effective land administration (land registration and titling system) that will support equitable economic growth, improve land use efficiency and equity, enable low cost transactions, protect the rights of the poor, and improve livelihoods”; and

Component 2: “To assist the government in reforming, restructuring, and rationalizing State Owned Enterprises [SOEs] and to assist in the creation of an enabling environment for private sector led growth leading directly to these broader USAID objectives.”

2.0 FINDINGS AND OBSERVATIONS

2.1 OVERALL PROGRAM PERFORMANCE

2.1.1 Project Administration

The overall performance of EMG in implementing this project is acceptable, although many components of the project need serious review. There are some elements which need to be changed to make sure that the project goes forward with maximum efficiency. The project is large with multiple activities which require careful administrative oversight. An even flow of information will enable participants to perform their functions in a manner that will preserve the integrity of the project.

The area that needs the most immediate change is the overall project administration. The project is administered in a top-down fashion: the lead administrators are aware of most of the activities that project staff are performing, but often are not aware of the specifics nor do they seem to be able to relate the individual project components and objectives into a coherent whole. There were numerous instances in which top management made statements that were patently out of touch with the operations of the project. This was especially true when the Project Team met with the Evaluation Team to discuss the vision of the project. A number of statements made by the project leadership indicated both a misunderstanding of the land titling issues and a lack of effective coordination. A number of the recommendations made in this report are aimed at trying to change the administrative framework to ensure more openness, transparency, and accountability. It is hoped that, with changes at the top, it will simply be a matter of time before there is an adequate understanding of what the realistic goals of the project should be.

The project is divided into two unconnected components (see Section 1.3). It is important that these become better connected to the extent possible. Inasmuch as the privatization component deals with State Owned Enterprises (SOEs) that have land issues, it is important that the connection be made through the land component (I) of the project. Strengthening the synergy of those two components will streamline and focus the overall administrative framework, and help promote a unified team approach to the project, which at present, is not unified.

The Land Titling Component is large and unwieldy. The pilot activity at Ghazni is crucial to the land component (I) as a testing ground for all aspects of the titling activity. Unfortunately, the pilot activity has not progressed as far as it should at this stage of the project. If the tone of the titling activity is going to be tested by the activities in Ghazni, more attention needs to be paid to that area. Having only one staff person overseeing what is going on there with periodic visits from lead staff is not enough. Ultimately this project has to be projected into a national focus. With the limited ability that exists in the pilot area at present, it is unlikely that the project can or will be able to achieve nationwide status anytime in the near future. In addition, if the pilot area is to be the testing ground for the conversion of the deed reporting

system into a title registration system,¹ it is essential to prepare the staff of the GoA institutions involved for this eventuality. Leaders of the government offices in Ghazni did not appear to understand the full dimension of changes anticipated by the project. Without this clarity of knowledge or vision, it is difficult to see how the Ghazni operation will be sustainable after the project's end.

It is essential that cadastral maps receive treatment equal to the deed registration aspects of the system. The planning for a new system requires that the officials who will play a pivotal role in its development and implementation understand what is to happen. However, they currently are not cognizant. Thus a general training course should be provided for these officials once the project has determined where it is going and the GoA has accepted this approach.

Much of the emphasis of the project is on urban problems, especially informal settlements. The problem posed by informal settlements is a large and complicated one, but so are all of the problems that exist. There needs to be more specific focus on rural areas as a reciprocal to urban problems and a reordering of priorities so that urban and rural issues can be given equal attention.

Finally, there has to be more activity dealing with the issue of dispute settlement. Many of the officials met during the evaluation appear ready to deal with the question of dispute resolution in a creative way. However, it is not clear that the subject of disputes has been actively discussed and dealt with as a project activity. If it is, it is being glossed over by some of the more pressing urban issues of informal settlements. It is essential that the pilot activity dealing with the settling of disputes as set out in the Scope of Work (SOW) be pursued aggressively as soon as feasible.

There are a number of other activities that need to be started and pursued with vigor. However, the project embodies a large number of activities, and to do everything at once is not possible. It is important to set real priorities now that there is over a year of project experience, and actively pursue these priorities while remembering that it is also necessary to work in areas that have not been active. There appears to be a shortage of staff, especially in the land tenure/titling side of the project; if additional staff were made responsible for implementing the parts of the project that are lagging behind, progress would be more balanced and the successes would be applauded more loudly. At present, it is clear that some aspects of the project are progressing very well, but others have not received any attention, yet all are essential to a working title registration system.

Box A: What is Land Policy?

Land policy expresses the political choices that are made between the state and its citizens concerning the distribution of power and interests in land. It consists of a whole complex of socio-economic and legal prescriptions that dictate how land and the benefits from the land are to be allocated. It determines both the rights of access to land and the use of land-related resources. Since a balance must be struck among exploitation, utilization, and conservation of land as a resource in order to obtain sustainable development for the survival of its citizenry, it is the opportunity for government to state clearly its objectives for the management and use of land resources.

2.1.2 Land Policy and a Vision for Land Administration and Management

When one talks of land policy (see Box A) one must understand that this is directly related to the broader concepts of land tenure and property rights. Land is the ultimate resource and is both a physical commodity and an abstract concept related to the rights to own or to use it. Land tenure is the institutional structure that determines how individuals and groups secure access to the productive capabilities of land.

¹ This is still not clear as the project staff repeatedly noted that the conversion would take place, but neither the activities of the project nor the documentation makes the ultimate intention clear.

Land management is the process through which land resources are utilized, while land administration addresses issues related to land information and how they can be utilized for effective and efficient land management. These institutional structures are comprised of a mixture of political, economic, legal, and social factors and relationships, each of which has an impact on land rights and use.

The basic issues of land tenure and property rights are concerned with questions of access to resources, the distribution of resources to members of the society, and the security of tenure that these members of society hold over these resources. Tenure literature often speaks of a bundle of land rights over land resources. This bundle is made up of four basic components: physical location; length of time rights are held; types of use that are permitted; and the individual's rights vis-à-vis those of the family, community, or nation.

The development of a land policy serves a number of purposes, in particular to:

- 1) Enhance security of tenure and help to determine mechanisms for the distribution of land rights among citizens;
- 2) Promote social stability by providing a clear statement of a government's goals and objectives toward land;
- 3) Provide a basis for economic development because decision making is based on expectations and predictability;
- 4) Help to ensure sustainable land use and sound land management; and
- 5) Give guidance for the development of legislation, regulations, and institutions to implement policy and monitor its impacts.

Development of a sound land policy is a multi-step process that includes: 1) problem and need identification, 2) tentative ideas about policy needs, 3) stakeholder consultation, 4) policy formulation and the balancing of pros and cons with regard to various options/costs and benefits, 5) authoritative statement of policy, 6) embodiment in law, and 7) public education on policy and law. Policy development logically is followed by implementation and monitoring and then future adjustments. It is a continuing process of stating the government's immediate, mid-term, and long-term goals with the understanding that modifications to the basic policy will be necessary following implementation and as a result of changing circumstances and opportunities.

Unfortunately, as indicated in Box B, project objectives are not clear; neither is the vision of the GoA for land administration and management 5, 10, or 15 years down the road. As a result, the project has focused on deliverables against set targets—for example, the number of Makhzans reorganized, number of people trained, or number of titles issued—instead of clearly stating the long-term goal and identifying measurable achievements that help determine whether or not the project is on track. This has been described as a 'stovepipe' approach of focusing on detailed project components and deliverables without a clear picture of how or when these various components unite into a coherent whole.

If a parcel based land title registration system is the ultimate goal (and this is not clear), then it is difficult to reconcile this pursuit with the existing deed recording system which is being restored, indexed, and photographed. This system currently has no spatial information to aid in locating the individual land holding. Furthermore, the cadastral system is 30+ years out of date with potential

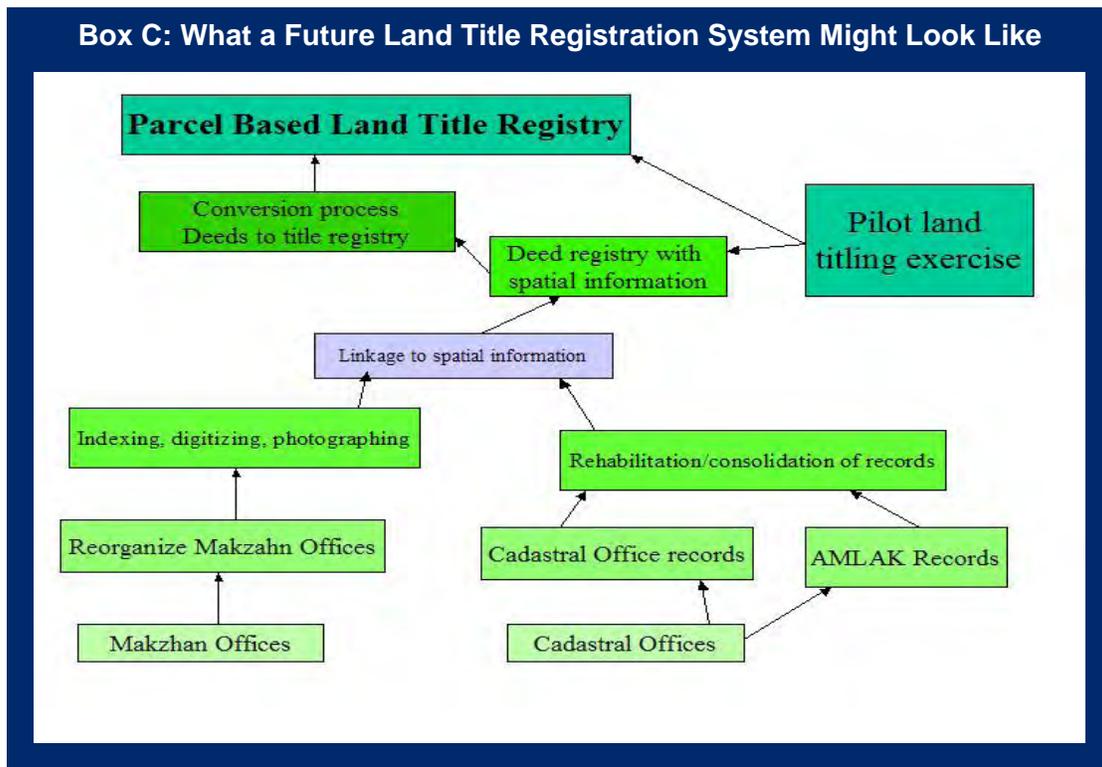
Box B: The Key Problem

The focus of the EMG project addresses security of tenure through the development of the institutional capacity to record and manage records of rights to land. However, activities of the project have been undertaken in a vacuum without clear understanding of the direction the Afghan government wishes to take with respect to a national land policy and its willingness to address the basic issues of land reform.

conflicts among record-holding agencies²; a proposed pilot titling exercise for informal settlement areas has a mixture of formal deeds and ‘customary’ deeds; and there is a general lack of clarity of what is ‘state’ land, ‘public’ land, and ‘private’ land.

The illustration of how the land registration/administration system might look and operate in Afghanistan in Box C lays this out in the broadest terms. Ample consideration needs to be made of the time and resources necessary to move through this transformation. The establishment of a country-wide parcel based registration system is, in all likelihood, a 20-30-year exercise. More importantly, what does it provide in terms of security of tenure that an existing system does not and is it sustainable? There is already substantial evidence that the population is not using the existing system because it is too costly in terms of time, money, and corruption.

The more appropriate approach should be to develop a system that meets the present and immediate future needs of land holders to provide them with adequate security of tenure and permit government to develop and implement sound programs for land administration, land management, and land taxation. This will entail having multiple systems existing at the same time. Even if there is a move towards a systematic titling exercise, given the time that this will require, something has to operate in those areas not yet titled.



² Information is inconsistent and sometimes contradictory between the cadastral offices and that existing in the Department of Landownership of the Ministry of Agriculture, Livestock, and Food [AMLAK] offices.

2.2 THE PROJECT AND EMG ACTIVITIES

The objectives of the project are outlined in Box D.

2.2.1 Land Titling/One-Stop-Shop (Task A)

One-Stop-Shop

“Work collaboratively with counterparts, [and] assist in the establishment of procedures for simplifying the transfer of titles within a one-stop-shop.”

The one-stop-shop concept conceives of a streamlined deed registration system that is convenient, simple, fast, and inexpensive. It is being introduced as a pilot exercise in Ghazni to design and test this concept. A working group composed of the courts, cadastre, AMLAK, tax office, and municipality has been established to coordinate the effort. The ultimate goal is to reduce the number of steps necessary to transfer property from a time-consuming 12 to 16 steps (depending on the issue) to a format that is manageable and will induce individuals to keep the records updated and clear. Training of cadastre staff, compilation of deed records, and mapping has begun. The International Security Assistance Force (ISAF) has provided rectified satellite images to assist in the mapping process. Work is now moving forward to determine and record property boundaries.

A major accomplishment of the project has been securing the initial and continued cooperation of all local institutions involved in the exercise. The Makhzan has been reorganized and the deed archives are presently being photographed and entered into a database.

Representatives of respective agencies with whom the team met indicated a number of advantages to this approach: an opportunity for support to update their records or maps, the provision of more and current information to assist in the settlement of disputes, and development of clear property lists to enhance tax revenue collection. However, it is still too premature to assess whether these outcomes will be actualized, and how soon.

While the assumption is that these agencies are working together and cooperating in the sharing of information, the reality of this happening will only become obvious once the office is up and functioning and serving the public. Procedures will need to be developed that allow for each related institution to have access to the data and be able to update the data as appropriate for the needs and requirements of that institution. Currently the information is only accessible to the Supreme Court.

It was impossible to discern during the team’s brief visit the accomplishments of Task A that are of direct benefit to the public. Presumably the primary objective of the one-stop-shop concept is to improve and streamline the provision of land record services to the public. A secondary objective, though rarely stated, is to improve the flow of information among various GoA agencies, thereby facilitating the functioning of sound, efficient, and transparent land administration and management. The consolidation of activities and processes into a one-stop-shop should include a considerable investment in public education and

Box D: The Tasks of the Project (as originally set out)

- Task A – Create a One-Stop-Shop
- Task B – Review the Cadastre
- Task C – Create a Land Titling Database
- Task D – Legal Consolidation
- Task E – Informal Settlement Conference
- Task F – Establish a Pilot Titling Project
- Task G – Pilot Dispute Resolution Project
- Task H – Women’s Legal Defense Program
- Task I – Reorganization of the Makhzans

information. However, there was no evidence of this having taken place, or being developed. Public education should become a more visible activity in the Ghazni pilot area.

2.2.2 Spatial Information - Cadastre/AGCHO (Task B)

“Develop the capacity to map ownership and identify boundaries with a unique identifier, thus ensuring that the same property cannot be sold twice and that land does not overlap with other properties.”

The deeds registered at the Makhzans generally make no reference to the maps that show where the properties are located. Achieving tenure security will be enhanced through the determination of an adequate and authoritative geographical location of the property. The SOW of the LTERA Project is biased in its emphasis of the registration of deeds and the legal aspects of property registration, though Task B and Task C define the tasks of building capacity in mapping ownership and recording boundaries.

EMG has executed pilots during 2005 where properties have been located by integrating existing indicative information on new photo-maps, with subsequent verification in the field. Since the available base maps and cadastral maps in Afghanistan are old, the project has tested new mapping methods to be used for geo-referencing of deeds and cadastral maps in the pilot areas. EMG has introduced an innovative approach to mapping using a hand-held camera for aerial photography taken from a helicopter. The digital photos were rectified using designated software run on a normal PC, resulting in high-resolution digital orthophoto-maps which have proven to be highly useful for field delineation of parcels. The pilot mapping work was successfully conducted with teams of the Afghan Geodetic and Cartographic Head Office (AGCHO) during the first part of 2005, after which the activity stalled. Mapping of pilot areas of Ghazni are planned for early 2006. There is not yet a capacity in place at AGCHO to continue this activity.

The pilots also included identification of de-facto boundaries in the field, but the pilot exercises did not include the adjudication of rights; therefore, the legal validity of the resulting boundary maps remains uncertain. It is suggested that the technical pilots need to be expanded to include cadastral procedures and adjudication of rights. A complete cadastral process requires a systematic approach to integration of available spatial information followed by adjudication in the field with procedures for cadastral works and approvals. This step is a significant part of the evolution towards a title registry. The current cadastral capacity needs upgrading for use of modern survey methods and for adjudication of boundaries in the field.

The government agency responsible for basic mapping and cadastre, AGCHO, has no functional technology for mapping or cadastral surveys apart from outdated instruments. According to an agreement between EMG and AGCHO signed 3 April 2005, EMG has committed itself to providing on-the-job training to AGCHO in a number of specific areas, including the development of standards of digital information to digital property mapping and delivering equipment. Some training has been conducted during 2005, but the management of AGCHO expressed its concern to the review mission that insufficient progress had been made by EMG on fulfilling its obligations of the agreement. Currently, limited progress has been reported on building capacity within GoA institutions in accordance with Tasks B, C, and D.

EMG has observed the needs for institution building in AGCHO and provided a business plan advisor to AGCHO in mid-2005, resulting in a plan for the restructuring and modernization of the AGCHO prepared through a joint effort with management. The plan provides the overall framework for institutional reform and capacity building. The official application for modernization of AGCHO in accordance with the plan has been submitted to the “Independent Administrative Reform and Civil Service Commission”

(IARCSC). The application has been accepted, and it is expected that AGCHO may be included in the PRR-2 (Priority-Reform-Restructuring 2) process, at least partially, in early 2006.³

EMG conducted a valuable review of its Land Titling Component,⁴ whereby a range of development perspectives were outlined. The reports include recommendations that are yet to be incorporated into the work plans of the project, e.g., related to building a cadastre and developing a National Spatial Data Infrastructure (NSDI) in Afghanistan. EMG renovated a project office and a conference room at AGCHO in 2005 which was ready for use in July 2005. It is not currently staffed, but an international consultant is now being recruited to be placed there. In January 2006, EMG employed a GIS specialist as office manager at the EMG project office in Ghazni. The new project team member will work on developing the AGCHO mapping capacity for pilot activities in Ghazni. It is also promising that the EMG office in Ghazni has established cooperation with the relevant branches of government.

It can be concluded that the EMG focus on and staffing of the Spatial Information Task of the Land Titling and Economic Restructuring in Afghanistan (LTERA) Project has been insufficient during the first part of the project, but EMG is now recruiting a number of experts to fill positions in this area.

2.2.3 Land Titling Database (Task C)

“While working with Afghan nations and developing local capacity, develop a system for registering titles, boundaries and the history of ownership.”

EMG has developed an application for computerization of the deeds which is referred to as the “Legal Document Information System” in the technical report.⁵ System development was conducted during 2005 by an EMG international consultant supported by Afghan experts of the EMG team in a consultative process with key persons at the courts.⁶

The EMG development team analyzed the nature of existing legal documents and the functionality required by Makhzans. Based on this analysis, an apparently well-structured database has been designed, which accommodates the legal information of the deeds and caters to the different phases of data input, maintenance, and queries concerning deeds. The database was developed in MS-Access and was gradually expanded during 2005 to include current features and functions. According to the technical report of November 14,⁷ the database appears to be well designed in logical tables with classification of documents, document information, dates, and identification of grantors/grantees, which permit tracking of transactions.

³ Other efforts of EMG in the business planning process were focused on building cooperation with the allied forces, US-National Geospatial-Intelligence Agency (NGA) and International Security Assistance Force (ISAF), which have produced high-resolution updated satellite mapping of Afghanistan. As a result, the LTERA project has established cooperation with the military mapping services on obtaining access to unclassified high-resolution image maps. Pilot activities in Kabul and Ghazni use maps delivered free of charge by ISAF /US-NGA. An agreement has been signed between Kabul Municipality, AGCHO, and ISAF-US-NGA on production of a new map series in 1:5000 with key data (names, administrative boundaries). However, AGCHO currently lacks the capacity to fulfill its contribution to the agreement.

⁴ EMG project reports prepared by Prof. Don Grant “Assess of Land Titling Component”, 12 November-7 December, 2005.

⁵ EMG Report, “Legal Document Information System,” by Elton Manoku, LTERA Project, November 14, 2005.

⁶ The early versions of the “Legal Document Information System” helped illustrate the benefits of computerization to Judges unfamiliar with the technology, and the latest version is now running at Kabul Makhzan, where digitizing and data entry is ongoing.

⁷ See, Note 12, above. The Evaluation Team has not conducted a technical review of the database and the “Legal Document Information System,” so all comments are based on the system description of the technical report.

The system reflects the actual archiving systems at Makhzans with deeds organized in books, *Kondas*, and the various types of deeds registered. In addition to the structured information of the deeds, the database includes a table for storage of digital photos of the corresponding graphical documents (deeds). It is understood, that the system includes a daily log and user interfaces for maintenance and searching of documents. The database and user interface is implemented in Dari and English.

The EMG development team observes prudently in the November 14 report, “Whether this information is all that is ‘needed’ now and in the future, or whether it is more than what is ‘needed’ now or in the future is yet to be determined.”

The Evaluation Team agrees with the approach taken by EMG in development of the database and introduction of the system. It is reasonable to assume that it is necessary to start with a system corresponding to current document information and court functions, and when maturity among the prime users develops, it will be possible to review the specifications of the system and make the necessary adjustments. A review of the specifications shall also be made based on digitizing experience with assessment of resources for entering data into the different data fields, versus the prospective frequency of use and plans for further development of the system. It is proposed that the project adopt the format of the database to include entries for spouses’ names/IDs, which is essential for securing women’s rights.

The LTERA SOW Subtask C, 1 defining a unique qualifier linked to boundary descriptions is yet to be developed in cooperation with the Cadastral Department and other public agencies such as AMLAK or major municipalities, as planned by the project (ref. to Year 2 Work Plan, p. 11). Having unique and stable IDs is critical to any land registration system. The task needs to be a priority in respect to the redesign of the deed registration database.

Observations Concerning the Feasibility of Computer System Management at the Makhzans: The project needs to reflect on the feasibility of whether the court system can sustain the running of the “Legal Document System Information System” beyond the project. Is it at all feasible to suggest that Makhzans shall have in-house capacity to develop, manage, and maintain computer systems? Even in more developed countries having a mature IT infrastructure, judges and the court staff are considered users responsible for the data, while technical system administration is performed by a government computing center also in charge of managing data security at appropriate levels. It is suggested that urgent initiatives be taken by EMG to explore the GoA strategy for IT implementation and capacity development, and work with other donors to design the organization of the registration system within the overall national IT infrastructure and capacity.

Also a strategy needs to be developed for how to develop and implement a “centralized system” as mentioned in SOW, Task I.3 “... *developing a centralized digital system to manage land documents in Afghanistan.*” It is suggested here that the term “national system” could be more appropriate, as state-of-the-art technology permits different, flexible, system configurations.

Observations Concerning Reforming the Recording System: The objective of the LTERA Project envisions developing the current deeds’ registration system into a title registration system to “create and implement a cost effective land administration (land registration and land titling system) ...” A full land registration system will be based on a parcel based cadastre, catering to the registration of the full bundle of rights. The issue of registration of limited rights is of high importance for designing a registration system responsive to the varied types of rights to land in the country. A simplified system focused only on ownership (English term “free hold title”) could distort the tenure situation and endanger other types of rights, especially of vulnerable groups. Included in the design effort should also be the issue of registration of mortgages as defined in Subtask C.2 of the SOW. It is recommended that the EMG develop a vision for the future land registration system design and organization in this perspective.

While the EMG Year 2 Work Plan does include the task of “Re-engineering Property Deeds Registration System” (Task 1B), the major steps proposed by EMG for 2006 seem to be limited to implementing

adjustments to the computer application at the Makhzans. This seems to be inconsistent with the stipulations that the project will develop a technical system that can be used by all property-related agencies (Year 2 Work Plan, p. 11), and that this land information system will be designed by May 2006. Possible inconsistencies can be seen at the activity level in implementing an “Operational Land and Property Information System” in Ghazni by September 2006, while conceptual work and design of a land information system is only to be initiated in 2006.

The EMG Year 2 Work Plan operates with two major different information systems: the “Property Deeds Registration System” (Task 1B) and a “Land Information System” (Task 2B) without properly explaining and relating concepts and planning of the different systems and ultimately integrating the two. Other undefined information systems mentioned in reports and plans are further confusing. Moreover, insufficient attention is given to the role of the cadastre in the future land registration system. The project needs to address the questions of roles and responsibilities for land data among the different branches of government and how this information is shared and coordinated. Plans for rolling out the system may therefore be dangerously premature until an overall model and strategy is determined, and before the system is fully tested and stable. Rollout must also be seen in the context of IT infrastructure and capacity building.

It is noted that the project plans to propose a valuation system as well as draft and seek the approval for a revised valuation process (by October 2006) and a new registration law or regulation by December 2006. Prior work by the project on these issues was not made available to the Evaluation Team. Unless the scope is limited, these deliverables appear to be unrealistic considering the design questions, vision, and the consultative process.

As long as the project has not yet developed a vision for the future land registration system or discussed strategies of implementation, the proposed deliverables for 2006⁸ appear to be inadequate and open to misinterpretation and unrealistic expectations. It is necessary to define more precisely in the work plan what the project plans to achieve within a well-defined strategy before proposing a full-scale rollout.⁹ Therefore, it is proposed that the LTERA Project—in close cooperation with key agencies—go further in analyzing how a transformation from the current deeds registration system to a land registration system may take place. The GoA should be presented with issues and options of system development at a strategic level.

It is unsettling that the original SOW of the project refers to TASK C (“Creation of a Land Titling Database”) without discussing the issues of what the legal implications of data entry are or what the legal significance is of data in the system. After all, the registration system is to be used by judges in a legal process, and it already is being used by judges in Kabul Makhzan. It is mandatory to discuss these questions as part of the design and strategic process. Furthermore, the future land registration system will eventually be connected to questions on adjudication of rights, a topic also to be discussed in this context, since clean data will only be achieved as a product of adjudication.

2.2.4 Legal Consolidation (Task D)

The project has reviewed all the laws relating to land (see Annex 5) and a systematic analysis of the provisions and their relevance to project activities reveals that many of the laws do not need to be changed. For each subject that was reviewed, the relevant law is cited and discussed. Memos have been

⁸ EMG Year 2 Work Plan, Task 1. Registration, January 2006, pp. 4-6.

⁹ YEAR 2 – Work Plan: “The property deeds registration system will be redesigned with the Supreme Court using outcomes of the pilot and international experience, with the ultimate goal of rolling out the model to all provinces within Afghanistan.”

prepared for each area of the law considered, as summarized in Table 2.1. These are the laws whose provisions are mostly used to deal with land-related problems. The focus is primarily urban, and it is necessary to develop the legal framework dealing with rural issues.

To sum up, the laws that are considered relevant to the issue of informal settlements are embodied in existing law. The revisions being considered are not major and are only considered in order to facilitate the regularization of informal settlements and related issues. Major legal revision has not yet been undertaken. The problem of informal settlements is both rural and urban, but the project is focusing on urban issues to a large extent. It is suggested that a better balance between the urban and rural problems be undertaken.

Future legislation should focus on the conversion of the recording system to a title registration system if that is the direction in which the GoA wishes to move. While this did not appear on the timeline for project activities, since the project is still involved in cleaning up the Makhzans in order to create the database from which the title registers could be created, it is not an activity that needs to be undertaken at this immediate time. However, as the work in the pilot area proceeds and the content of the database for the LIS system becomes clarified, it will be essential that the new land title registration law be enacted.

TABLE 2.1: LAWS RELATED TO LAND TENURE AND PROPERTY RIGHTS IN AFGHANISTAN

SUBJECT	LAWS	RELEVANCE
Restriction of Ownership	Civil Code Articles 1900; 1904; Decree on the Distribution and Sale of Residential, Commercial and State Owned High Rise Buildings in Kabul, Chapter II, Paragraph 5, Article 22, Article 9 and Article 14	Deals with the restriction of ownership in state distributed lands. The legislation recognizes ownership and empowers the owner to utilize, exploit and exercise rights on his own property in light of limits set by the Kabul Municipality [the provisions of these laws have been violated by the persons in the informal settlements].
Statute of limitations in various kinds of disputes	Civil Code Article 966, Commercial Code Articles 538, 582, 942, and 965	These articles deal with the timeframe within which cases may be brought to court where the issue involved immovable property.
Joint ownership	Civil Code Articles 1935, 1951, 1953, 1963, 1992, and 1995; the Mojal-ul-Ahkam Articles 1222 and 1223	These articles deal with the legality of having joint ownership and the process for dividing jointly owned land. When jointly owned land is being divided, it is required that (1) all owners of the jointly owned land are present when the division is taking place; (2) all joint owners must consent to the division; (3) if there is an infant, the administrator of the infant must be present; and (4) the property must be divided in an equitable and fair manner.
The validity of customary and other documents used for verification of ownership when the land is being surveyed	Law on Land Management, O.G. 795, 2000, Article 4 paragraphs 1-7, and Article 6; Law of Survey, Settlement and Verification, O.G. 346 of Sept. 1976, Articles 47, 48, and 51; Presidential Decree No. 83 of 2004, O.G. Jan 5. 2000, Article 7, para 2	There are three sequential laws relating to the proof of ownership. The Presidential Decree of 2004 supersedes the other two laws and states that the only document that can be used to prove ownership is a valid legal deed.
The sale, distribution and transfer of land by the government to individuals	Presidential Decree No. 83 of 2004, O.G. Jan. 5 2000, Articles 1, 12; Regulations to the decree, Article 4, paras 1 & 2, Article 25 para 2, Article 3 para 2, 5; Regulations to the Presidential decree O.G. 21, 12.7.2004, Articles 6, 7, 8, 11, 14, 15, 16, 17, 18, and 20	The sale, distribution, and transfer of land is a very complicated transaction and involves many aspects of the law. The project is currently attempting to simplify the process.

SUBJECT	LAWS	RELEVANCE
Land grabbing	Regulation on Methods of Sale of Residential, Commercial and State Owned High Rise buildings in Kabul City, O.G. 794, 25.6.2000, Article 24; Regulations on Housing Affairs of Urban Projects of the 25-year Plan for Kabul City, O.G. 794, Article 6, and 13; Presidential decree No. 83, O.G. 816, 1.16.2004, Article 14 para 1 and 16; Law on Municipalities, O.G. 794, 2000, Article 16 para 37	Under the laws and regulations relating to land grabbing, two things stand out: (1) the ban on land grabbing is not strong and explicit; and (2) the governmental organs which should be responsible for the prevention of land grabbing have not been defined.
Easements	Civil Code, Articles 2340 to 2368	The provisions on easements in the Civil Code present the law of easements in a way that is generally accepted in countries with a legal tradition similar to Afghanistan. The rights are all defined and provided for in a set of clear and concise provisions.
Expropriation	Law on Land Expropriation, O.G. 794, 2000, 23 articles; Regulation on Housing Affairs, O.G. 794, 2000	The law is administered through the Council of Ministers. However, the authority to deal with expropriation exists in three institutions: Ministry of Urban Development and Housing, the Municipality of Kabul, and the Cabinet.
Building Standards	There is no specific law in the area, but there are some Civil Code articles which relate. They are Civil Code Articles 1908, 1929, 1930, 1931, and 1932	In general, the standards have been imported from Russia.

2.2.5 Informal Settlement Conference (Task E)

In 2005, the most significant accomplishment of the EMG outreach activities was the Informal Settlements Conference held 23-25 January 2006¹⁰ while this evaluation was taking place. The three-day conference had an average of 180 to 200 attendees each day, approximately 75 percent of whom were Afghans. Additionally, the conference was chaired by the Minister of the Ministry of Urban Development and Housing (MUDH), and was attended by senior persons from four ministries (i.e., Deputy Ministers from MUDH, MICT, Ministry of Justice [MoJ], and the Municipality).

There were two significant outcomes of the conference. First, the conference initiated dialogue between the Municipality and MUDH on the informal settlements in Kabul where previous communication and cooperation had been poor. Second, the conference created public awareness of the complex issues surrounding property rights and public services.¹¹ However, with the exception of an interview of an Afghan EMG staff with Minister Pastoon (MUDH) on the popular national television station, TOLO TV, there was an absence of media coverage for the conference in the local and international media.

2.2.6 Establish Pilot Titling Project (Task F)

There are two pilot titling projects that are in the land titling component: (1) in District 7 of Kabul where there is a multitude of informal settlers; and (2) in Ghazni 100 km southwest of Kabul.

¹⁰ The conference was delayed from December 2005 at the request of USAID/Kabul.

¹¹ The major point of discussion was the need to include informal settlements in the Master Plan to avoid being excluded from receiving public services.

i) The District 7 Pilot Project

The LTERA Project has made substantial progress on methodology development for tenure upgrading in informal settlements taking a participatory and holistic approach. The project has prepared a valuable analysis with its proposals, and the solid pilot activities are well documented.¹² Very good working relations have been established by EMG through the whole system from the political top level of the municipality, the Mayor, the Ministry of Urban Development and Housing (MUDH), the districts, and the community councils. A project office working on building an appropriate information system is established in the community which underlines the substantial nature of the pilot.

Excellent baseline data was established through extensive household surveys in the communities and other forms of data collection. This data has been integrated into a GIS information system with the possibility of producing a range of thematic maps. The pilots in District 7 include 585 parcels (2.67 km²) and a total population of about 6,000 persons. An inventory of property rights at the household level demonstrated that the typology of tenure varies even within communities. The EMG team of planners, lawyers, and technical specialists have worked together with two Community Development Councils (CDCs) in District 7 and also in District 13. The methods developed are based on an integrated, incremental approach to improving tenure security, which integrates the issues of tenure insecurity with lack of local planning, basic services, and physical infrastructure issues.

The pilots demonstrate the willingness of community members to negotiate spatial rearrangements among themselves for greater benefit of the community. The pilots also illustrate that tenure upgrading in informal settlements must be preceded by local planning and, based on visits of the team to one CDC, the project has achieved positive impact, in particular, with respect to gender (see Box E).

The pilots will need to conclude the ongoing formalization process in the pilot areas including the final allocation of land and adjudication of boundaries performed by the appropriate authorities in as an authoritative process as the legal framework may permit. Procedural matters should be addressed as well as the legal basis for systematic adjudication, as also planned by the project.

The review team acknowledges that the EMG team has prepared a good analysis of its findings, and developed valuable proposals on up-scaling of the pilots in cooperation with other donor activities underpinned by estimated costs for community upgrading. It is recommended also to include aspects of the required manpower (experts and others) and timelines.

Despite these accomplishments, there are shortcomings.

First, the project recommends one legal model of formalization of informal settlements through the adverse possession method, but fails to fully argue other alternatives of formalization. It is suggested by the Evaluation Team that several other methods are relevant and that the adverse possession approach is insufficient to resolve the complexity of informal tenure situations in Afghanistan, even within one type of informal settlement.¹³

Box E: Work with CDCs Reveals a Positive Gender Impact

The review team had the opportunity to visit one of the CDCs in District 7 to gain a firsthand impression of the participatory process as well as the upgrading work already implemented in the community with the voluntary contributions of community members. The review team acknowledges the fine work being done by the EMG team in the informal settlements. The EMG team has paid due attention to gender issues and the pilots show a good representation of women.

¹² EMG Report on Pilot project District #7 "Informal Settlements and Land Tenure Issues," January 2006.

¹³ In fact, the pilots demonstrate that the new rearrangements of land in the informal communities go far beyond what would be the result of a historical interpretation of the tenure situation (based on adverse possession). The new plot layout is achieved

Second, while the pilot project covers the question of informal settlements on public land, it does not sufficiently cover broader tenure questions related to public land in its varied forms (urban - rural). Neither does it cover the question of informal settlement on 'private' land. Public land tenure uncertainty is a root cause of conflict, and clarification is key to reducing disorder in the land market and delivering land for development. The topic of how to stop illegal land occupation and land grabbing needs to be further expanded by considering the dramatic nature of these activities both in terms of the legal framework and options of intervention/prevention.

Third, whereas the project beyond doubt is contributing to strengthening tenure security in the pilot areas, it is questionable whether the pilot titling activity focusing on informal settlements will yield commercial benefits by releasing property for more productive uses (ref. to SOW, Task F.1).¹⁴ The project recommends addressing the question of land supply for housing plots, but does not focus on land supply for commercial purposes.

Finally, the SOW of the LTERA Project has an urban bias. The SOW-Task F refers specifically to a pilot in an urban setting. The LTERA Project has already taken steps to balance the efforts of the project by appointing a rural land tenure advisor. The Evaluation Team recommends that the SOW of the project be clarified or revised with respect to the rural-urban dichotomy. Since land located deep within the settlement areas of Kabul is still classified as agricultural land, and peripheral growth is extensive, land tenure issues—even if the project focus is maintained as urban—will inevitably involve rural land tenure issues. Considering that Afghanistan is predominantly a rural economy, and considering the wide expanse of rural land, it is proposed that rural land tenure be given higher priority in the remaining years of the project.

The recently appointed EMG Rural Land Tenure Advisor has already progressed with a systematic analysis of rural land tenure issues and the preparation of proposals¹⁵ for pilot activities. The Evaluation Team proposes that the overall SOW of the LTERA Project be revised to take into consideration EMG proposals on development of a strategy plan for rural land administration.

b) The Ghazni One-Stop-Shop Pilot

For a discussion of the Ghazni Pilot area, please see Section 2.2.1 (a), page 7 above.

2.2.7 Pilot Dispute Resolution Project (Task G)

The preliminary work on the setup of a dispute settlement pilot has been organized through the District 7 informal settlements activity. Discussion with the GoA has raised the question concerning the use of the *shura* as the dispute-resolving body. Although the GoA has not officially accepted this idea, it is clear from the discussion held during the Evaluation that the GoA is sensitive to the needs and is responsive to

through holistic planning and local negotiations in a process akin to modern land consolidation, which also has the effect of cleaning the legal status of the total area. The legal efforts of the project should take full consequences for the pilot findings. It is also necessary to discuss when/if full formalization is ever necessary.

¹⁴ Subtask F.1 suggests that the LTERA Project needs to take a wider perspective on different types of tenure alternatives and opportunities. For example, it is urgent that the pilot titling activities focus on areas, where titling would make land available for commercial activities and investments, whether urban or rural which is emphasized in Component 2 of the project.

¹⁵ EMG report, "Assessment of Department of Landownership of the Ministry of Agriculture and Livestock and Food (AMLAK) as the Land Management Institution," Bastiaan P. Reydon (2005).

EMG document, "Strategy Plan for Rural Land Administration System," Bastiaan P. Reydon (2006).

EMG document, "Proposed Plan of Action of Rural Land Tenure Advisor: Pilots for an adequate land administration in Afghanistan," Bastiaan Reydon (2006).

the idea. The next stage of the project will actively develop the pilot for dispute resolution. So far, it appears to be on the right track.

2.2.8 Women’s Legal Defense Program (Task H)

This task was not included in the evaluation as no activity had yet started.

2.2.9 Reorganization of the Makhzan Deed Archives (Task I)

“Reorganization of property deed archives kept in Makhzans in Kabul, Kandahar, Herat, Mazar and one or more other regional centers, such as Shiberghan, Kunduz and Jalalabad.”

“While working through Afghan nationals and developing local capacity, develop a database system for recording titles, boundaries and the history of ownership.”



View of a Makhzan (deed archive) before project clean up.



ANDRE HERNANDEZ, EMG



A cleaned up and reorganized Makhzan.

ANDRE HERNANDEZ, EMG

The EMG project team has surveyed 31 of 34 Makhzans to assess reorganization needs and has successfully reorganized deed archives totally in 12 Makhzans with an additional 4 completed but having the documents stored in Kabul. In total, these represent over 85 percent of all property deeds in Afghanistan.¹⁶ In comparison with the minimum five Makhzans specified in the original SOW, this component of the project has performed well beyond target. However, while targets have been adapted during project execution, it is

¹⁶ EMG Monthly Report, December 2005, dated January 10, 2006.

unclear from available project documentation what the actual commitments made by EMG to USAID are on reorganization of the Makhzans. Three Makhzans are planning to be completed during 2006, three others have had their records entirely destroyed, and the remaining 12 Makhzans are in areas of insecurity preventing work on those records. It is noted that many of the provinces have been classified as “not secure”—a number which is probably not stable. The most recent project plan sets the completion time for reorganization of the remaining three Makhzans classified as secure by 2006.

As is evident in the “before” and “after” photos, reorganizing the Makhzans has not only resulted in well-ordered archives, it has also saved irreplaceable legal documents and the information they contain from being lost. The necessity and benefits of this activity are beyond discussion. The construction of new court buildings across the country, also financed by USAID, has given the reorganized archives much better facilities so that the combined results are good working conditions and surroundings for providing future services of registration. The EMG teams working on cleaning up and reorganizing the deed archives should be praised for their valuable work.

With regard to Subtasks 3 through 6 of Task I (Box F), as defined in the SOW for the Evaluation, the status of achievements or progress made remain uncertain. The focus of this section is on building the digital databases (Subtask 3) and digitizing deeds (Subtask 4), while the topic of system development will be covered under the review of Land Titling in Section 2.2.4.

The physical recovery, re-indexing, and storage of property records have been Herculean tasks, and the project should be commended for having completed the amount of work they have. However, this is only the first stage of the rehabilitation process. Sustainability of the reorganized records implies a well trained and supervised staff, very clearly defined procedures for handling records, updating records as transactions occur, and maintaining the information in a secure environment. Digitizing property records provides an increased level of security, because it is easy to make duplicate copies of record information.¹⁷

It is clear that in the Ghazni pilot area, the digitization of data has already begun. The deed archives have been reorganized, the project has set up a digital photograph office, and there is a staff member photographing the deeds and creating the beginnings of the database that will become the basis of the Land Information System (LIS) and the input for the title registers. It is not clear that this function has begun anywhere else in the country.

However, some EMG project reports do not clearly distinguish between reorganization and computerization. In the USAID-LTERA Newsletter of January 2006, it is stated that “the rehabilitation, reorganization and computerization of Makhzans is nearing completion in 12 of Afghanistan’s 34 provinces with plans to reach all provinces within the year.” This is strongly misleading, as computerization of deeds has only been started in Kabul and Ghazni, where the number of deeds digitized over eight months in 2005 were about 7,000 in Kabul.¹⁸ In

Box F: Reorganization of the Makhzans - Subtasks

- “1. Rehabilitate office space in Makhzans, equip it, and construct document storage facilities.
2. Sort deeds into logical order and place them in purpose-built document storage cabinets that have been labeled for ease of use.
3. Create a catalog and database for cross-referencing to the original registry books in the cabinets and for developing a centralized digital system to manage land documents in Afghanistan.
4. Link or integrate the database of registry books with the database of deeds contained in the registry books developed under Task C.
5. Train staff in use of the system.
6. Design legal and regulatory framework for changing the governance structure of a Makhzan.”

¹⁷ It must be kept in mind that the important issue is information. Physically recovering documents is not as important as recovering the information that is on those documents.

¹⁸ EMG Monthly Report, December 2005, p. 7.

Ghazni, no figures are available, but digitizing has just begun by one person who, during the site visit, informed the review mission that he has completed a few thousand, managing to do <100 per day. It is not known whether other Makhzans are in a process of computerization.

The total number of deeds in the Makhzans in Afghanistan is estimated at more than 3.5 million, although these documents are not all land-related and need to be sorted and classified.

The progress and productivity of the digitizing work is unclear. On the one hand, the December report¹⁹ states that new data entry staff have been hired and, on the other, that “Members of the public will be able to access data from Kabul Districts 1, 2, 3, 5, and 6. The data entry of property deeds from these districts has been completed.” A more precise reporting on progress of data entry is needed, as well as some reflection on this issue from EMG. Why are there only 7,000 deeds registered in five districts of Kabul? How many deeds are registered at Kabul Makhzan in total? What is the priority of conversion or digitizing of deeds?

Furthermore, the reports do not clearly distinguish between the creation of digital (data entry) databases (indexes), and digitizing (scanning or photographing) of deeds. This should be reported with more precision. Is it possible to complete data entry and quality control in three provincial Makhzans in two months? Is there any sustained capacity within these organizations? A number of important questions such as these should be clarified through more accurate reporting in the future.

According to the biweekly report of December 16, a computer has been installed in the office of the president of Kabul Makhzan, and a one-week training course has been provided on accessing legal information from the database. It is not clear what the status is of data entry and what data is included in the legal information in Kabul Makhzan. System configuration at Kabul Makhzan is not reported, and essential issues of database management and system administration are not documented. How is the work organized, and what are the roles and responsibilities? Essential matters of database management and data security need to be documented. Furthermore, it is unclear if the Afghans trained and performing the duties are all contracted staff, or if there is a sustainable capacity within the organizations to run and maintain the systems.

Once Makhzan records have been recovered and sorted, land-related records need to be compiled in a fashion that allows for two future activities, each related to the possible conversion to a parcel based title registration system. First, records must be organized to allow all records for a given parcel to be linked to each other. This will permit at some future date the ability to do the ‘title search’ to determine that the current owner is legitimate and the title issued to him/her can be guaranteed. These documents then would become the archive of the title registry, while only the name of the current owner needs to be referred to in the title registry. Second, records must be tied to some spatial reference. By identifying the spatial location of the property referred in the deed and providing a unique parcel identification number, it will be much easier to consolidate all related documents.²⁰

Both the Cadastral Office and the AMLAK office have records from earlier cadastral exercises. The examination and linkage of these records to the reorganized Makhzan records is the next critical step in building this spatial reference. The exercise would serve two major purposes: first, it should give some indication of how many of the records of the Makhzan registers already have spatial reference information and, second, it should give some indication of how out of date the Cadastral and AMLAK records are and the extent of ‘updating’ that will be necessary. Both of these activities are critical to determine the scope of future activities and the resources necessary to undertake them.

¹⁹ Ibid.

²⁰ This step has not yet begun in earnest.

2.2.10 Capacity Building

The EMG capacity-building task is a crosscutting activity intended to improve the capacity of Afghans to instill a sense of ownership of the system, ensure sustainability, develop replicable pilots, and support institutional and legal issues.²¹ The outreach task intends to raise awareness and generate support for the project's goal, and to address the serious property issues regarding multiple claims to properties, best approaches to upgrading informal settlements, and other property issues.

This program component is pivotal to the success of the overall policy reform program. However, one must differentiate between policy formulation and policy execution. To allow the successful formulation of a new policy framework, consensus within the public sphere with regard to the necessity to reform and the substance of the reform program is vital. The outreach program must penetrate all spheres of government responsible for ensuring the successful implementation of the program. Increasingly, this calls for outreach beyond central units of government, into the sub-national structures at the provincial, district, and municipal levels. Following eventual promulgation, capacities to oversee policy execution need to be built. Successful land administration requires governance capacities to be established, based on government-agreed functions.

The key Ministries for 'land titling' (MUDH, MoJ, Municipalities, and the Ministry of Agriculture, Livestock and Food [MoA]) currently lack the institutional and human capacity necessary to implement an equitable, transparent, and accountable land administration system. In 2005, EMG focused most of its capacity-building efforts on infrastructure activities, such as the renovation of 12 Makhzans,²² and two new pilot projects (Ghazni One-Stop-Shop and District 13), instead of building human capacity. While this allowed funds to be disbursed, and could have been used as an incentive for further reforms, the failure to follow up with building core human resource capacities is worth noting. There seems to be a lack of understanding by the client and various stakeholders, such as government agencies and other USAID programs, of EMG activities and objectives. EMG did, however, have a significant presence at government ministries, with seven EMG staff occupying desks at seven government agencies, providing on-the-job mentoring to governmental employees. The evaluation report from Don Grant noted a capacity-building shortfall in the EMG program, which EMG has acknowledged and addressed through a new strategy for Years 2 and 3 (see Annex 9). In 2006, EMG will focus on developing training materials, training of trainers, and conducting training.²³ Additionally, EMG intends to hire a Capacity Building/Training Advisor in 2006 (see Annex 6).

Given the political and social sensitivities to property rights in Afghanistan, as well as the lack of technical knowledge and untrained professionals, educating the public, civil service, and international stakeholders is critical to ensuring stability and progress in the land reform process. In 2005, the significant accomplishment of EMG outreach activities was the Informal Settlements Conference that was held 23-25 January 2006 (see above). Another success in public outreach has been the community-level work in the pilot project with the informal settlements in District 7. EMG has facilitated the

Box G: Success of the CDCs

"The residents of Kabul "fear that at any moment their houses would again be demolished by the government in order to implement the City's Master Plan. Yet, with the establishment of Community Development Councils (CDCs), which for the first time started their activities in this district, the residents have been enabled to solve their problems through these CDCs."

²¹ EMG Strategic Plan for Year 2 and 3.

²² EMG December 2005, Monthly Report.

²³ Year 2 Work Plan, January 2006.

resolution of property issues within District 7, with the assistance of *shuras*, organized by UN-HABITAT. According to one community leader, this work has been a success (Box G).²⁴

The relationship with EMG and the *shuras* is excellent. This trust, however, will need to be translated into positive outcomes, and there is an urgent need to better manage expectations and the sequencing of support to meet them. A major accomplishment of the Informal Settlements Conference was the public statement by Minister Pastoon to consider informal settlements in the Master Plan. However, there is a risk as the inhabitants of these settlements interpret this statement to mean that their property is now secure.²⁵ Clearly, if the process of protecting property rights is to be effective, managing expectations and minimizing concerns through greater outreach will be vital.

The EMG Public Outreach Advisor has focused efforts on the privatization component through journalist site visits of liquidated State Owned Enterprises (SOEs) and building private sector relations. EMG acknowledges the poor performance on the outreach task,²⁶ and intends to hire a full-time Public Outreach Advisor who will focus on the Land Titling Component. While the official reporting mechanism with USAID (narrative biweekly and monthly reports) is cumbersome and is difficult for tracking project status and performance, other USAID subcontractors have supplemented their communications plan through informal oral conversations and emails which have helped eliminate confusion. EMG began a newsletter in January 2006 which will highlight the successes of the EMG Program. Additionally, EMG has prepared a strategic plan for community outreach and capacity building which it intends to implement in 2006.

2.2.11 The Privatization of State Owned Enterprises

The privatization of SOEs represents the second component of the project. This evaluation deals specifically with the land titling component of the project. However, because the land on which the SOEs are found is a crucial concern in the privatization process, some comments are included here as they relate to land tenure.

Land surveys have been performed on 65 SOEs. These activities influenced the recent hiring of project staff to work at the Ministry of Finance (MoF) with the SOE privatization. Valuation of SOE land has been based on local market rates utilizing the information sources of three local real estate agents.

Despite the above activities, there is still lack of clarity on SOE land titles.²⁷ The MoF, the lead ministry for privatization, has not focused on the land issue.²⁸ Land titles on SOEs rely primarily on oral testimony of SOE management which produces a conflict of interest. The pilot program on SOE land titles began late in December 2005. The Land Titling Group within the project only began the search for property documents on five pilot SOE sites in AMLAK, Cadastre, and Courts during the last two weeks of December 2005.²⁹ Activity to develop a methodology to confirm SOE ownership was developed in late November 2005.

²⁴ Speech by Semen Rahimy, Center Manager, Community Development Center of District 7, January 29, 2006.

²⁵ Interview with head of women's *shura* (Semin) in District 7.

²⁶ Rick Andrews, Managing Partner, EMG, January 26, 2005.

²⁷ Lack of clarity on SOE land ownership was an obstacle (December 2, 2005, EMG Bi-Weekly Report).

²⁸ Interview with John McDonald, Senior Advisor, Ministry of Finance. This point was confirmed at an interview with the Deputy Minister of Finance, Mr. Samedi, and with Mr. Ibrahim, head of SOE Privatization at the MoF.

²⁹ EMG Bi-Weekly Report, December 30, 2005.

There has been inadequate collaboration and consultation between the two project components on SOE land privatization. There have been no formal meetings between the two components. While there is a Working Group with members of both project components, it is primarily an informal structure. The lack of presence by the privatization group at Land Titling Strategy meetings and no joint weekly meetings would seem to confirm this assessment.

There appears to have been little understanding by both the government and EMG on the importance of secure title on land before privatization and privatization alternatives.³⁰ Inadequate consideration has been given to privatization options (e.g., lottery). The MoF did appear open to alternatives to outright privatization (e.g., community land, resettlement), but later conversations with advisors to the MoF contradict this statement and suggest that the Ministry is relying on SOE privatization to increase revenue and is primarily concerned with maximizing proceeds from privatization.

2.3 PROGRAM INTEGRATION

The development of a sound land administration and land management institutional structure is both a complex and multi-sectoral activity requiring a coordinated effort involving multiple stakeholders. The LTERA Project is attempting to undertake a program of privatization of SOEs at the same time that it is assisting in the development of a land titling program. The latter is fundamental to the land administration/land management structure. The coordination and integration of these project components into the broader land sector is critical to the successful creation of these institutions. Within each sector, distinct stakeholders need to be identified, and the success of the above components requires integration to strengthen impact.

Managing the political, economic, and social consequences of both land reform and privatization requires development of a joint government, EMG, and civil society management strategy that limits the potential negative impact of these processes, particularly for poor and disadvantaged groups, including inhabitants of informal settlements. To ensure the overall credibility of the program, the minimization of the risks of state capture of newly available land will be vital. The following section assesses both strengths and weaknesses of EMG's integration program with three key program stakeholders—government, USAID, and cooperation partners.

2.3.1 Government of Afghanistan

As land is an issue of public polity, the integration of efforts with government remains fundamental to the success of the land titling program. While EMG has already moved to consolidate relations with some spheres of government,³¹ successes have largely remained at the level of building institutional relations rather than actual program results within key government departments. This is exemplified by the presence of project staffer Yohannes Gebremedhin who is well known by many of the civil servants who work in Ministries or Agencies that are within the operational sphere of the project. Actual policy reforms are difficult to initiate and should be undertaken with administrative reforms being made to enhance the core functions of different units of government in policy execution, e.g., through Priority Reform and Restructuring (PRR). This entails working through the Independent Administrative Reform Civil Service

³⁰ Interview with Deputy Minister of Finance, Mr. Samed.

³¹ While EMG has some working relationship with multiple ministries (e.g., Ministry of Urban Development and Housing, Kabul Municipality, MoJ), EMG does not appear to have a clear champion at the Cabinet level within the Afghan Government for EMG Land Titling Program.

Commission (IARCSC) to, for example, clarify crossed institutional mandates with regard to authority over urban land issues (i.e., MUDH vs. MoA). To date, EMG has not engaged with IARCSC over the reform of key units responsible for land issues.

According to the Interim Afghanistan National Development Strategy (I-ANDS), a major economic and political constraint is land. However, EMG has not developed a comprehensive policy dialogue on land reform at the executive level.³² The I-ANDS states that “*the slow progress of land reform and the arbitrary enforcement of property rights undermine the productive use of both urban and agricultural land and capital.*”³³ Despite this major impediment to economic growth, land reform was not adequately addressed in the I-ANDS; instead, the focus was on creating a process for land registration and establishing a system for land dispute resolution.³⁴

A number of EMG expatriate and Afghan staff are physically located within government offices to strengthen integration and provide important advisory services. In addition, the positive relationships with deputy ministers at MUDH, MoJ, Municipalities, and MoF are steps in the right direction. Nevertheless, lack of integration, particularly in terms of working with key areas of government, has led to a number of activities being poorly formulated:

- i. EMG did not actively consult with the Afghan government in the drafting of the insurance law leading to the abandonment of their draft law. As a consequence, an amendment to the existing law, prepared by government, was finally adopted.³⁵
- ii. EMG has not participated in the ‘Nuisance Tax’ Working Group, co-chaired by MoF and the Afghanistan Investment Support Agency (AISA), which seeks to eliminate all such taxes, including those in relation to property transfers.³⁶ Although EMG prepared a report on the proposed property transfer tax, they did not participate in the established forum for tax reform in Afghanistan, and thus, have not engaged in consultation with either the private sector or the Afghan government—both of which are vital to tax compliance.

Greater coordination with certain departments and established fora would have avoided such a situation. EMG continues to provide advisory services to government officials, many of whom are not responsible for making decisions with regard to land policy. An opportunity exists with the proposed establishment of a land law working group to increase high-level political buy-in, although the working group requires high-level Ministerial participation, not deputy level.³⁷ While the establishment of the MoJ Land Law Working Group is a first step in moving towards land reform, there is no agreed-upon TOR for the

³² Peter Middlebrook, World Bank Senior Advisor to I-ANDS.

³³ Afghanistan National Development Strategy, Interim Strategy, Part I, p. 60.

³⁴ Afghanistan National Development Strategy, Interim Strategy, Part I.

³⁵ The EMG-proposed insurance was based upon a complex Canadian insurance law, and did not fit the local context. Interviews with John McDonald, Legal Advisor to Ministry of Finance and Mark Meassick, USAID, and Amendment to Insurance Law.

³⁶ Interview with John McDonald, Legal Advisor to Ministry of Finance, January 24, 2005.

³⁷ “MoJ Land Law Working Group Terms of Reference.” PowerPoint presentation prepared by EMG, The Land Law Working Group, chaired by the Deputy of the MoJ. There are two subgroups, Rural Land Subgroup, consisting of Ministry of Rural Reconstruction & Development and Ministry of Agriculture, and the Urban Land Subgroup, headed by the Ministry of Urban Development and Housing.

relevant Ministries, nor is the Working Group established at an executive level where engagement is absolutely vital to successful implementation of the reform agenda.³⁸

2.3.2 EMG Collaboration with other USAID Initiatives

There is a need to enhance program integration with other USAID-funded projects as a way to develop greater leverage for reform. The USAID Rule of Law Group attempted to engage EMG on a number of occasions but with little success—even after repeated requests for meetings. According to the current head of the USAID Rule of Law Group, “EMG needs to be more engaged.” According to other observers, “there is a lack of clarity with regard to EMG program activities”³⁹ which limits successful integration and, in some cases, creates expectations that are too high with regard to what can finally be delivered. According to the current Deputy Director of USAID, “EMG needs a macro level strategy,”⁴⁰ which would benefit from greater integration with other USAID objectives, which are themselves macro-focused. USAID acknowledges some responsibility for lack of clarity in the EMG program design, in part resulting from a high turnover in CTOs,⁴¹ and EMG did collaborate with USAID’s Over the Frontier (OTF) Competitiveness Program on a proposal for reduction of Property Transfer Tax. However, they were unfortunately two months late in scheduling meetings with the SOE Commission to discuss the joint proposal with OTF.

2.3.3 Integration with other Donor Agency Initiatives

As highlighted by the previous evaluation report (Grant), there is an absence of uniform donor support for the development of land policy. This reflects that land reform cannot be projectized (sic) across different coordination partners, but rather requires a central government body to provide the counterpoint for effective integration and better coordination of different efforts. However, and in spite of projectization (sic), a number of positive examples stand out, as follows:

- i) Close collaboration and strong working relationship with World Bank’s Kabul Urban Reconstruction Project (KURP)⁴²;
- ii) EMG would appear to have a functional working relationship with KURP, UNDP, and UN-Habitat on community development; and
- iii) EMG also participated in the development of the Strategic Plan for the MoJ, led by UNDP, writing the section on land law.⁴³

³⁸ The political reality in Afghanistan is that Deputy Ministers currently have insufficient sway over the policy agenda; therefore, high-level engagement is a precondition for successful policy dialogue on land law. According to the EMG December Status Report, there is a verbal commitment by MoJ on the proposed Terms of Reference for the working group, however, the Ministry of Agriculture did not attend the December 2005 working group meeting, and therefore has not yet consented to the Land Law Working Group.

³⁹ Mark Meassick, USAID Economic Growth, Meeting held January 24, 2006.

⁴⁰ Deputy Director, USAID, at USAID Briefing Meeting on EMG Evaluation, February 3, 2006.

⁴¹ Mark Meassick, USAID Economic Growth, at USAID Briefing Meeting on EMG Evaluation, February 3, 2006.

⁴² According to Dr. Gebremedhim, the World Bank has recently requested that EMG manage the tenure component of the \$45 million KURP Program.

⁴³ EMG led the development of the property law section of the 10 year strategic plan for MoJ in cooperation with United Nations Development Program (UNDP).

EMG missed an opportunity and unfortunately did not play a key advisory role in the Working Group, as testified by the I-ANDS Pillar Manager and World Bank Senior Advisor to I-ANDS, despite the fact that the foundation of the I-ANDS was broad-based consultation on key issues in relation to economic growth.⁴⁴ EMG, however, is listed in the UNDP Proposal for I-ANDS ‘Priorities & Requirements’ as the primary donor for three projects to achieve the Rule of Law Benchmarks outlined in the Afghan Compact.⁴⁵ In anticipation of its role in dealing with land policy and in executing the above-mentioned projects, EMG’s work plan reflects that it will focus its activities on the MoJ, and on workshop and activity participation in the MoJ Working Group.

2.3.4 Collaboration between the EMG Program Components 1 and 2

Although there are no cited instances of coordination between Components 1 and 2 within the project, it is imperative that the two components do coordinate given the large number of activities that are underway as reported in this section. It is also clear that coordination in dealing with the donor community and the Afghan government necessitates a degree of coordination between the two components.

The coordination activity in the project is impressive indeed. A list of project collaborations was requested from project staff, and a list was made available to the evaluators (see Annex 7). However, these records and the process of record keeping should be formalized to make information easily obtainable, and to forego the need for special requests.

⁴⁴ Wahid Waissi, Pillar Manager, ANDS, and Peter Middlebrook, World Bank Senior Advisor to I-ANDS.

⁴⁵ I-ANDS Priorities and Funding Requirements 1385-1388 (2006-2008), Draft for Discussion. Proposal to I-ANDS by UNDP outlining the following components: (i) program of consultation, seminar and workshops to discuss debate and formulate solutions on land-related policy and strategy among all stakeholders, including government officials, land policy experts, and the public; (ii) study/research to analyze Afghanistan’s legal and institutional framework related to land policy to: (a) identify gaps and deficiencies therein, and (b) determine what new laws or other reforms may be needed to improve the legal and/or institutional framework; and (iii) setting up an office mandated to implement land policies and related laws and registration.

3.0 ISSUES AND RECOMMENDATIONS

A number of recommendations have been made to assist project management. Some are more general than others, but the team has attempted to capture the needs that emerged during the evaluation and project into the future with recommendations that will assist in making the project more effective. Following the general recommendations, more specific recommendations tailored to specific activities of the project are provided.

3.1 GENERAL RECOMMENDATIONS

These general recommendations are divided into five general topics that have been identified as the overarching general activities that are included in the project tasks. The full matrix of the general findings with accomplishments and recommendations is included as Annex 8.

3.1.1 Vision

Develop a comprehensive vision and a strategy to achieve that vision using outside technical assistance within a period of 30 to 45 days. As part of the vision the project should be able to present what they see as the operative land administration system of the future and, given the difficulties that now exist, how they plan to reach those goals.

3.1.2 Program Design

Create a framework that recognizes the different alternative models that provide tenure security and promote economic growth. In addition, improve the dissemination of information within the project, and commence discussion on moving toward a title registration system. Develop a process for a comprehensive land policy framework and initiate conversion of existing cadastral plans and records. Finally, work with relevant governmental agencies to define the national standards for core data sets of land information systems.

3.1.3 Communication/Administration

Develop better project management tools and procedures, clarify the role of technical assistance in the government offices, and strengthen media and information exchange.

3.1.4 Program Implementation

Develop a strategy for building a national property rights records system including resources and timing for implementation. Next, accelerate data entry activity and commence testing of the one-stop-shop in Ghazni. In addition, there is need to increase awareness of the political, social, and economic issues

related to privatization, including greater efforts to enhance linkages between Components 1 and 2. Finally, there is need to give greater attention to clarifying ownership issues of the SOEs prior to liquidation, and to develop models for proceeding with the privatization of the SOEs.

3.1.5 Institution Building

Assign a project advisor to the I-ANDS to ensure that land issues are considered across the three pillars. In addition, it should integrate project activities in the PRR structure, and commence activities to establish a parcel based registration system.

3.2 SPECIFIC RECOMMENDATIONS BY ACTIVITY

3.2.1 Administration

To improve communications and administration and to prevent the perpetuation of the top-down administrative system from continuing to lodge basic information mostly at the higher end of the administration network, it is recommended that the project:

- Take care to involve as many persons as are involved in a given task in the planning of project activities to avoid the continuation of a top-down mode of administration.
- Review its various tasks and realign them according to a logical framework within which the activities are actually taking place so that members of the two components are more likely to interact and discuss activities they are undertaking. Project staff should create procedures to meet regularly in order to discuss planned activities so as to improve transparency.
- Undertake periodic roundtable discussions including staff members, Afghan and Expatriate, to present to staff on significant movements or activities in their sphere of influence.
- Develop a system whereby each staff member is encouraged to communicate with others. This will ensure that development of internal ideas is transparent, and that involvement by project staff is as complete as feasible. This should be carried out in a manner in which all staff are able to review what is taking place among components through more widespread use of automated file sharing.
- Strengthen coordination with other donors and/or the GoA in areas other than those strictly required as part of project activities. The amount of active coordination that has taken place is impressive. However, there is no administrative mechanism which allows observers to understand the full scope of activities implemented with donors and the GoA. Changes are necessary to make these activities more transparent.

3.2.2 Land Titling/The One-Stop-Shop

The One-Stop-Shop concept is now underway in the Pilot Project area of Ghazni. The work there has just begun and it is difficult to make any specific recommendations until the work is further along. To deal with this aspect of the evaluation, it is best to review Section 2.2.1 regarding progress to date.

3.2.3 Spatial Information Recommendations

The review mission observed that the LTERA Project needs to address more closely the need for building a national cadastre with appropriate methodologies, procedures, standards, and information systems. Thus, it is recommended that the project:

- Support the development of a vision and strategy for the Afghan cadastre through training and pilot activities.
- Develop proposals along with Afghan authorities on differentiated approaches of building spatial property data suited for different types of tenure situations.
- Institutionalize the project's mapping and development activities within the responsible government agencies as quickly as feasible and build capacity of the cadastral department by providing the appropriate equipment and training.
- Develop the specifications for the implementation of a cadastral system within a National Spatial Data Infrastructure taking into consideration costs and resources (considering potential revenues from property taxation).
- Review the need for fiscal cadastral records (with particular focus on high-value properties) which will enhance implementation capacity for levying property taxes.⁴⁶

3.2.4 Land Titling Database Recommendations

- Address the issue of reorganizing the Makhzans beyond the archives by developing an organizational model for Makhzan deed registration services with a description of roles and responsibilities, staffing, and work processes considering the situation before and after computerization.
- Prepare a strategy for public outreach for communicating the services being provided by the Makhzans.
- Adopt an analytical approach to pilot work by determining productivity through a monitoring system which will provide data relevant to the restructuring of the system for the future.
- Analyze options for sustainable solutions to computer system and database management at the Makhzans connected to the national IT infrastructure.
- Develop a standard deeds format with improved content designed with the necessary information for a national registration system. Ensure that the model used in the pilot areas is suited for other locations.

⁴⁶ Property taxes may generate substantial revenues which could meet government policies of mobilizing domestic resources (Ref. to "Report No. 34582-AF, Afghanistan, Managing Public Finances for Development, December 22, 2005"). The government policy is to mobilize domestic revenues starting with focusing efforts on larger taxpayers and high-yielding revenue sources. This policy puts property taxation at the centre of attention. With a total tax revenue of only USD 269 million in 2004-2005, property taxation on high-value properties could potentially multiply the revenue over a relatively short period of time. Kabul municipality collected only around USD 6 million in revenues in fiscal year 2004-2005. During the review mission, the Mustafi, Mr. Shah Wali Hassanzai, Director of Mustafiat, Kabul, cited the former Minister of Finance, Dr. Ghani, for estimating that public revenues according to current legislation could be multiplied by 5, if there were an efficient levying and collection system of property taxes. This estimate appears to be conservative in the case of Kabul.

- Investigate development of a better system of property valuation which can lead to more efficient levying and collection of property taxes.

3.2.5 Legal Consolidation Recommendations

In light of the discussions that have taken place during the evaluation with the land titling component team related to eventually creating a parcel based title registration system, the available documentation does not indicate specific plans for sequencing nor do they clearly state the form that the creation of such a system will take (see Annex 9). Is the project moving to an operational deeds registry with linkages to spatial data or a parcel based land title system? It is recommended in light of these discussions that the project:

- Clarify as soon as possible its intentions in relation to creating a title register to link the cadastral office and Makhzan office and thereby move towards a working title registration system.
- Prepare a title register that will be generated out of the database which is being created for all parcels of land in Afghanistan. The register should be coordinated with the cadastral maps for the area in which the land is located.
- Review the land titling or registration law in order to make the necessary changes which should be incorporated into the legislation (incorporating the legal changes that have been introduced) which convert the property recording system into a title registration system.
- Refrain from imposing any legal change to the status of land unless it is dealing with an SOE that is being privatized by the project or urban land that is in an informal settlement and qualifies for regularization. No other lands than those specifically being considered in the project TOR should be privatized until the formal land administration system recommended by the project and adopted by government is in place.
- Propose to the government a reduction in the number of steps required to register land to a manageable number which reflects the needs of the title registration system being put in place.
- Create a formula in the immediate future for the creation of a unique parcel reference number which will be the coordinating element between the cadastral map and the proposed title register.

Discuss with the MoJ the implementation of a system that would recognize *shura* as an acceptable body throughout the country to hear land disputes. These disputes would only be eligible for a subsequent hearing in a normal court if six months (or a reasonable time) has elapsed and the accepted resolution has not been implemented.

3.2.6 Pilot Titling Project

District 7 Pilot Project: It is recommended that the project develop its ideas further with respect to the following tenure issues:

- Clarify tenure challenges related to public land, which includes instituting a program to systematically identify and inventory all state/public land with an eye to developing options to stop illegal land occupation and land grabbing.
- Develop a tenure upgrading strategy for informal settlements.
- Focus on the tenure issues related to land for economic use to strengthen linkages with economic development.

- Analyze and develop a strategy for resolving rural tenure issues through the existing land administration and institutional infrastructure in existence.

In view of the above, the Evaluation Team recommends a revision of the SOW of the LTERA Project to clarify priorities and sharpen its focus.

Ghazni Pilot Project: See the recommendations in 3.2.2. (a) for the One-Stop-Shop which is planned for the Ghazni pilot area. In addition, where applicable, the recommendations relating to the District 7 Pilot Area should be implemented in Ghazni as well.

3.2.7 Pilot Dispute Resolution Project

There has been considerable negotiation with the various government agencies concerning the methodology through which disputes are terminated. The project has been gathering statistics and has satisfactory understanding of the issues. There is considerable emphasis on making sure the authority of the *shuras* is recognized. This seems to be happening.

Therefore, it is recommended

- To follow through with this activity in light of the discussion immediately above.

3.2.8 Reorganization of the Makhzan Deed Archives

The EMG reports and documentation are too vague to permit any review of the performance of EMG on Task I, Subtasks 3-6 concerning system development, digitizing, and implementation at the Makhzans. Current and proposed workflows, procedures, and organization of Makhzans are not documented in reports provided to the Evaluation Team. When the project activity under scrutiny is aimed at reorganizing Makhzans, this ambiguous state is a serious flaw. The EMG Year 2 Work Plan does not appear to offer any alleviation of these shortcomings.

Professional tools for the management of the computerization process are critical components of EMG's management, planning, and reporting of all aspects of the computerization process (Tasks I and C). They need to be strengthened and made transparent.

3.2.9 Capacity Building and Outreach Recommendations

As land is a public issue, the main targets for outreach and capacity building must be those central to formulating and executing future land policy. These recommendations hope to support the existing outreach and capacity-building program. It is therefore recommended that the project:

- Deepen and broaden its approach to outreach in order to provide information and guidance to all units of government responsible for policy formulation and its eventual execution.
- Focus its outreach program at the Ministerial and Cabinet level as this is where reform champions must receive encouragement.
- Recruit a media relations advisor immediately to package policy advisory notes into regular policy and technical circulars or briefs, in Dari and Pashtu, to senior government officials and other stakeholders.
- Manage carefully the expectations of inhabitants of informal communities and other stakeholders and develop and implement a strategy to address their concerns regarding implications for property rights following the reform program.

3.2.10 Privatization of State Owned Enterprises

Privatization must be an integrated process; it cannot be separated from other programs such as civil service reform, housing, resettlement, and public land management. Integration therefore involves better coordination and greater consensus on the long-term positive impact of such a divestiture program. Thus there is the need to:

- Increase the awareness that political economy issues are vital to privatization and other issues relating to land by creating a transparent process.
- Construct a critical path analysis to highlight which political processes are required alongside the technical work to ensure that the proper incentive has been established for senior officials to move forward while considering the many risks associated with rushed privatization.
- Create a realistic timeline in terms of proper disposition of assets.
- Consider alternative models for privatization, including voucher, highest bidder, or lottery and evaluate them in terms of scale, selection of economic players, and the development of a more robust/nuanced economy.

3.2.11 Program Integration

A successful privatization program must be integrated across different spheres of government. Unfortunately reforms to certain structures of government with formal responsibility for land administration are very much behind and are retarding the pace of the general reform program. Consequently, the program must look to make a greater impact at the Cabinet and Economic Committee level where enhanced integration can be achieved. Greater integration (and coordination) is required between both multilateral and bilateral cooperation partners.

The following recommendations aim to enhance program integration and increase consensus within the spheres of government responsible for carrying the reform program forward. The EMG project must be seen as an agent of reform, not the reform program itself. Its ability to deliver reform is contingent on its ability to influence and guide policymakers, and to support the administrative restructuring process while building capacities for greater governance in core sectors.

- Publicize the land-related reform provisions of the I-ANDS under the oversight of the National Lands Committee. This should begin by assisting in the drafting of land policy options.
- Assist the government in its consultations with provincial councils and governors' offices which look at constraints to economic growth by introducing consideration of land issues.
- Recruit a senior land advisor to support the I-ANDS Working Group which is considering policies related to privatization, land, and administrative and civil service reforms.
- Develop a communication strategy to enhance awareness of land policy and administration issues by issuing to appropriate government employees periodic circulars in Dari and Pashtu.

3.3 GENERAL CONCLUSION

Project activities have both serious weaknesses and strengths. There are four areas in which considerable change would be helpful:

1. The vision for what the land titling component of the project is meant to accomplish is unclear both to evaluators and to project personnel. During the evaluation it was initially stated that the goal is to establish a parcel based land registration system as the new format for land administration. Upon further questioning, it was noted that the land titling effort is aimed more at reorganizing the deed archives, but into what system is unclear in terms of scope and dimensions. There are activities aimed at improving the system, such as cleaning up and organizing the Makhzans, but they are not defined as part of an overarching set of goals that would provide immediate assistance to the institutional framework. Unfortunately, it appeared as if the project staff knew what they wanted as an ultimate destination, but NOT how to get there in a coordinated and coherent manner.
2. Confounding poor vision is the lack of policy dialogue with government on alternative directions that the land titling effort might take. It is clear based on the evaluation that government officials are happy with the assistance being provided by the project, but there was also lack of appreciation for alternatives for the creation of a viable land administration system. There is urgent need for dialogue on policies that will be realistic for the GoA to adopt. Project management discussed the fact that policy dialogue was necessary, but little in the way of concrete implementation had transpired by the date of the evaluation.
3. Internal administrative operations of the project need to be improved. There is not a good flow of information, nor are relevant people involved in activities fully and adequately aware of what is going on and what is needed. This became most evident when a special session was provided for the Evaluation Team on the vision of the project. Much of the presentation was irrelevant and did not portray the reality of what is going on. Specific remedies were suggested to assist with the improvement of the administration and communication within the project.
4. Individual activities supported by the project must be put into a larger perspective so that realistic goals are made clearer. For example, in the deed archives at the pilot project site in Ghazni, the deeds are being photographed and converted to a digital format. It is unclear why this is taking place other than to provide an archive for the Makhzan. The Evaluation Team was informed that a digital registration system was being developed, but there is no database in development nor is there any movement toward forming active linkages with the spatial data (which was not available digitally). This raises serious questions about the immediate goals of the land titling component. If the goal is to clean up the Makhzans, it is being accomplished, but movement toward a functioning digital system, which is stated as one of the immediate goals of the project, is not being understood or accomplished.

There were also strengths of the project which helped to offset these weaknesses:

1. The outreach to government institutions was particularly good. This was especially true in the case of Dr. Yohannes Gebremedhin who made it a point to get to know his Afghan counterparts well. He spent time making sure that they had confidence in him. Many Afghan officials indicated their pleasure in working with him as he was patient and always sensitive to their needs. His influence was felt in many different sectors in which the project was operating. He worked well with officials from the highest professional to the non-skilled laborer. The skilled outreach of Dr. Gebremedhin within both the Afghan and expatriate community is exemplary.
2. Many of the expatriate project staff maintained a very high profile in the institutions in which they were assigned. Rather than appearing every once in a while, a large number of them maintained offices in the institutional headquarters in order to provide assistance and advice whenever needed. This was considered to be a very positive element of the project.
3. Rehabilitation of the Makhzans by Afghan counterparts on net is also a very positive activity. While staff did not visualize it as a part of the overall development of the land administration system, it is

nonetheless an activity that is essential before anything can take place to restructure the system. This activity should continue, but it can be carried out by members of the Afghan community. The project need only train individuals to perform this function.

4. Creation of the two pilot project areas was also a positive element. These pilot areas, one urban and one both urban and rural, enable the project to experiment with policy and implementation mechanisms. This experimentation should be more closely tied to policy dialogue which will allow the project to test methodologies related to mapping and registration, make the GoA aware of the issues, and assist in making crucial decisions for the future design. It is essential that the policy dialogue be started and that a laboratory exist in which some of the activities relevant for the future can be tested. As both the District 7 and Ghazni pilot areas are beginning to function in a positive manner, support for both should be continued.

The Evaluation Team thus concludes that many of the positives outweighed the negatives in terms of the operation of the project. Many of the activities taken individually were proper and functioning satisfactorily. The overall vision, as noted, needs to be put in order. The thrust of this report is to recommend that there be a policy dialogue starting immediately with government so that a transparent set of discussions takes place on what a future land titling (registration) system might look like. This would include many of the project's current activities, but in a more integrated fashion to ensure that such a vision for a system is properly developed.

ANNEX 1: BIBLIOGRAPHY OF DOCUMENTS CONSULTED

REPORTS/STUDIES:

- Afghanistan Agricultural Master Plan, January 2006.
- Attachment number I To Regulation of Geodesy and Cartography Head Office of Democratic Republic of Afghanistan.
- Decree of The President of Islamic Republic Afghanistan About Amendments and Addition in Some Articles of State Owned Enterprises Law.
- “Economic Restructuring & Privatization of State-Owned Enterprises (SOEs),” SAID/Land Titling & Economic Restructuring in Afghanistan, Implemented by EMG at the Afghan Ministry of Finance Project started in February 2004, PowerPoint® Presentation.
- Evans, Anne and Osmani, Yasin, “Assessing Progress: Update Report on Subnational Administration in Afghanistan: Afghanistan Research and Evaluation Unit, June 2005.
- Gebremedhin, Yohannes “Legal Issues in Afghanistan Land Titling and Registration,” July 2005.
- Grant, Donald, Report on Consultancy to Review Aspects of the Afghanistan Land Titling Component, Part 1 *Assessment of Land Titling Component*, Part 2 - Short Term Opportunities, Part 3 - Trends And Directions In Land Administration, plus two PowerPoint® Presentations to USAID.
- Haldrup, Karin, “Afghan Geodetic And Cartographic Head Office: A review of the organisation and functions of AGCHO,” August 2005.
- Haldrup, Karin, “Mission Report July 11-September 25.”
- Hernandez, Andre Objective in Ghazni Pilot Project.
- I-ANDS Priorities and Funding Requirements 1385-1388 (2006-2008) Draft for Discussion.
- “Informal Settlements And Land Tenure Issues Report On Pilot Project District # 7,” USAID Land Titling and Economic Restructuring in Afghanistan, January 2006 Law on State Owned Enterprises (Retranslation May 2005).
- Krelove, Russell and Harrison, Graham, “Building a Strong Foundation for Domestic Taxation,” International Monetary Fund, Fiscal Affairs Department, May 2004.
- Middlebrook, Peter J. and Miller, Sharon M., “Living on a Life Support Machine: The Challenge of Rebuilding Afghanistan,” FPIF Commentary, January 27, 2006.
- Regulation of Geodesy and Cartography Head Office of Council of Minister of Democratic Republic of Afghanistan.
- Scope of Work: Afghanistan SOE Privatization, Excess Land Privatization, and Land Titling Project.

Stanfield, J. David, with Safar, M.Y., Leka, Edmond, and Manoku, Elton, "Reconstruction of Land Administration in Post Conflict Conditions," Paper presented at FIG Commission 7 Symposium on Innovative Technology for Land Administration, University of Wisconsin, State Historical Society, Wisconsin, USA, 24-25 June 2005.

"The Investment Climate in Exploiting Opportunities in an Uncertain Environment," Finance and Private Sector Development Unit, South Asia Region, The World Bank, December 2005.

Wily, Liz Alden, "Land Rights in Crisis: Restoring Tenure Security in Afghanistan," Afghanistan Research and Evaluation Unit, Issues Paper Series, March 2003.

Wily, Liz Alden; "The Deepening Crisis: A Policy Brief on Land Relations," Afghanistan Research and Evaluation Unit, Kabul, 7 July 2003.

WORK PLANS/PROGRESS REPORTS:

Afghanistan Land Titling and Economic Restructuring Project Strategic Plan for Years 2 &3.

BiWeekly Progress Report to 2 December 2005.

BiWeekly Progress Report to 16 December 2005.

BiWeekly Progress Report to 30 December 2005.

CVs and Scopes of Work for project staff members: Richard Sven Bernstrom, Dillon Coleman, Gregory Cullen, Claus Frost-Hansen, Yohannes Gebremedhin, Andre Hernandez, Robin Johnson. Amir Khan, Greg Maassen, Gay-LeClerc Qaderi, Bastiaan Reydon, Tressan Sullivan, Richard Wolfe.

Detailed Work Plan for Year 1: January to December 2005, Quarterly Update – April 2005, Land Titling and Economic Restructuring in Afghanistan (LTERA).

LTERA Monthly report December 2005.

Year 2 Work Plan.

PROJECT MEMOS

Administrations dealing with land-related issues.

Briefing Note for His Excellency the Mayor, November 29, 2005.

Classification of land under Afghanistan legislation.

Easements.

Joint ownership.

Land Grabbing.

Law regulating property expropriation.

List of Property Related Laws, Decrees and Regulations.

LTERA Land Titling Component: Vision and Implementation Plan.

Memorandum of Understanding with KURB Project.

National Building Standard.

Number of residents to whom the land team has provided legal assistance in CDC #1 of District 7 from May 1-30.

Period of limitation in civil disputes.

Restriction of ownership.

Sale, Distribution and Transfer of Land by Government to Individuals.

Site Office in District 7.

Strategic Framework for LTERA Land Titling Work.

Validity of customary and other documents for verification of ownership during land survey according to law on land management of Taliban.

What sorts of lands may the government sell and distribute?

Which courts have jurisdiction to deal with land-related disputes primarily?

MISCELLANEOUS REPORTS, DOCUMENTS, DIAGRAMS:

Agenda: Conference on Informal Settlements and Land Tenure Issues Organized by MUDH/KURP with the full support of USAID/LTERA.

Building on Success, The London Conference on Afghanistan.

Classification of State Owned Enterprises Recommended for Divestiture.

Framework of Counterpart Relationships for LTERA Project.

Land Titling Component.

LTERA - development options.

MoJ, Land Law Working Group, Terms of Reference.

Procedures for the Liquidation of State Owned Enterprises in Afghanistan.

SOEs Liquidation Procedure.

SOEs to be Liquidated 2006.

SOEs to be Liquidated 2007.

SOEs for Privatization 2006.

SOEs to be Tendered 2006.

SOEs to be Tendered 2007.

The Special Court on Property Issues.

Summary of Kabul Mustufiat Administered Taxes, Sukooks & Fees Appendix B and B1.

State-Owned Enterprises by Ministries.

Steps for the Amendment of the SOE Law.

Steps in Preparing a Title Deed for the Sale of a Land Parcel in Woluswali.

Task 3C Rural Land Initiatives: Assessment of Rural Land Ownership Information.

Terms of Reference MoJ Land Law Working Group, PowerPoint® Presentation.

USAID Afghanistan, “USAID/Afghanistan Strategic Plan 2005-2010 May 2005.”

USAID Afghanistan, Rebuilding Afghanistan: Progress for the Ministry of Finance.

USAID Afghanistan, Rebuilding Afghanistan: Bringing the Shahidan Market Back to Life.

USAID Strengthening the Economy, November 2005.

ANNEX 2: LIST OF PERSONS CONTACTED OR INTERVIEWED

Eng. Abdul Rauf, General President of AGCHO

Mr. Abdul Rashid Faqhari, Deputy Minister, Ministry of Economy

Mr. Abdul Wahid, President of Liaison Office

Eng Abdul Wasay, President of Planning, Cadastre

Mr. Azizullah Sahak, President of the Appeals Court, Ghazni Province

Mr. Mike Brennon, Chief of Party, OTF Competitiveness Project

Mr. John Dempsey, Legislative Expert, USAID Rule of Law Project

Mr. Martin Denning, Chief of Party, BearingPoint

Dr. Farouk Bashar, Senior Legal Advisor, MoJ

Dr. Q. Djallalzada, Deputy Minister, Ministry of Urban Development & Housing

Mr. Fada Muhammad Azizi, Chief of Accounting, Ghazni Province

Colonel Mike Finn, Combined Forces Command-Afghanistan, Political Military Integration (PMI), Chief, Justice Team

Eng. Hadayet, President of Geodesy

Samuel Hagadorn, Major, U.S. Army, Afghanistan Country Lead, National Geospatial-Intelligence Agency

Mr. Hakimullah Ghaniwal, Mayor of Ghazni

Mr. Hussain Abasyar, Cadastral Office, Ghazni

Mr. Ian Holland, Budget Advisor & Project Manager, Ministry of Agriculture

Mr. Iqbar Yousuf, Deputy Minister, AMLAK

Dr. Kamawi, Administrator of the Supreme Court

Mr. John McDonald, Legal Advisor to Ministry of Finance

Mr. Peter Middlebrook, World Bank, Senior Advisor to Afghanistan National Development Strategy

Eng. Mohamed Asker Fallah, Deputy President of AGCHO

Mr. Mohammad Nasiem, Director of the Cadastre, Ghazni

Mr. Nyazi, President of Policy and Coordination Unit, Municipality of Kabul
Mr. Samed, Deputy Minister of Finance
Mr. Semen Rahimy, Center Manager, Community Development Center of District 7
Mr. Shah Wali, Ministry of Finance
Mr. Sharifullah Ibrahim, Directorate SOE Privatization, Ministry of Finance
Eng. Shayeb Pantow, President of Remote Sensing
Haji Shir Alam, Governor of Ghazni Province
Mr. Siphosmai Malunga, Manager of UNDP Justice Programs
Mr. Suleman Fatimie, Vice President Investment, Afghan Investment Support Agency
Col. Michael G. Tovin, Judge Advocate, Rule of Law Officer, Combined Forces Command-Afghanistan
Eng. Wahid Abdul Ahad, Director of MUDH/KURP Project
Mr. Wahidi, Land manager, AMLAK
Wahid Waissi, Pillar Manager, Afghanistan National Development Strategy

EMG STAFF:

Mr. Rick Andrews
Dr. Yohannes Gebremedhim
Mr. Andre Hernandez
Mr. Rick Wolfe
Mr. Robin Johnson
Mr. Claus Frost-Hansen
Mr. Dillon Coleman
Mr. Richard Bernstrom
Mr. Tresson Sullivan
Ms. Bhuvana Anand

US EMBASSY & USAID

Ms. Ingrid Fryklund, USAID Rule of Law Advisor
Mr. Mark Meassick, USAID Economic Growth
Mr. Barry Primm, Deputy Director, USAID
Ms. Kathryn Stevens, Deputy Economic Counsellor, Embassy of the U.S.A.
Mr. Eamon Doran, CTO LTERA Project

ANNEX 3: SCOPE OF WORK

Evaluation of the Land Component of the Afghanistan SOE Privatization, Excess Land Privatization and Land Titling Activity

Background

A contract was awarded to Deloitte, Touche, Tohmatsu, Emerging Markets, LTD., in September 2003 under the Support for Economic Growth and Institutional Reform (SEGIR) Privatization II Indefinite Quantity Contract. The project, hereafter known as the Afghanistan LTERA Project, has one main objective, to promote privatization in Afghanistan.

Two of the initiatives under this contract are to: (1) rehabilitate land records and register land rights; and (2) privatize State Owned Enterprises [SOEs] and excess Land. The two activities have distinct objectives; however, there are complementarities.

Land allocation and uncertain property rights over land are commonly cited in Afghanistan as one of the most severe bottlenecks to economic development. The Land Titling and Economic Restructuring Project (LTERA) will address this bottleneck, by increasing tenure security. The project will be operational for a period of three years.

Under the land rights component there are a number of tasks and subtasks to increase security of property rights, including:

- Tenure Regularization
- Property Registration
- Cadastral Mapping/Parcel Indexing
- Land Law Development
- Capacity Building

Some of the subtasks include:

- Simplification of title transfer (one stop shop)
- Developing data bases for recording titles
- Consolidation of laws
- Public education
- Pilot titling activities
- Pilot dispute resolution activities, and focus on gender
- Property deed reorganization

A number of assessments have been conducted by both the contractor and external consultants focusing on the strategies and outcomes to-date of the land component. A sample is attached. Two of the most comprehensive have been conducted by Professor Don Grant (Assessment of Land Titling Component, December 2005), and by Professor David Stanfield (Upgrading the Property Registration System of Afghanistan, April, 2005). Both assessments, and particularly the one conducted by Grant, are micro-oriented, focusing on the details of the activities, including methodologies and specific outcomes of subtasks. While both are extremely useful, neither posits more macro- or meta- questions about the efficacy or viability of the land component, and particularly if the approach employed is the most appropriate to achieve the economic objectives articulated by the Mission.

Purpose of the Evaluation

The purpose of this evaluation is to review the “land component” of the EMG activity, and while the more micro questions are important (and some will need to be reviewed), it will focus on broader questions and recommendations. Specifically the team will investigate three issues:

1. Project Performance—is the activity accomplishing it’s objectives to promote land reform/privatization?
2. Mission Objectives—is the activity advancing the Mission’s objectives to promote economic growth?
3. Activity Integration—does the contractor sufficiently integrate its tasks, e.g. financial reform and land privatization?

PROPOSED QUESTIONS TO BE ANSWERED BY THE EVALUATION:

A. Project Performance

- What has been accomplished by the contractor for this activity
- Are the objectives of this activity reasonable, particularly given the fragile nature of the government, weak institutions, fragile security environment, etc.?
- Do the activities and accomplishments match the goals?
- Does the Project have the right “vision”? Goals?
- Does the Project have the right technical staff?
- Are changes needed to help the contractor meet the objectives of the contract? The objectives of the Mission? If so, what are they?

New Directions and Program Coordination

- Is there an alternate approach or focus to address security of property rights that would advance the Mission’s economic goals?
- Does the Project adequately link the two components, land tenure security and privatization?

TEAM COMPOSITION, LEVEL OF EFFORT AND MANAGEMENT

A. Team Composition

The Evaluation Team will consist of four people, one USAID/Washington technical specialist and three contract specialists, as below.

- Dr. Gregory Myers, USAID/Washington, Senior Land Tenure and Property Rights Specialist. Dr. Myers will act as team leader.
- Dr. Norman Singer, Land Lawyer, Consultant, ARD. Dr Singer is an American, based in the US.
- Dr. Mark Marquardt, Land Administration Specialist, Consultant, ARD. Dr. Marquardt is an American, based in Germany.
- Dr. Karen Haldrup, Land Titling and Registration Specialist, Consultant, ARD. Dr. Haldrup is Danish, based in Denmark.
- Ms. Sharon Miller, CPA, Consultant, ARD. Ms. Miller is an American, based in India.

B. Level of Effort

- Gregory Myers, 14-20 days. Gregory will be in-country for approximately 2 weeks, and will follow up to ensure Mission reports are complete.
- Norman Singer, 15 days. Norman will be in-country 10 days.
- Mark Marquardt, 15-20 days. Mark will be in-country 14 days.
- Karen Haldrup, 15-20 days. Karen will be in-country 14 days.
- Sharon Miller, 15-20 days. Sharon will be in-country 14 days.

C. Team Experience

The consultants must have work experience in land policy and reform issues, and in land privatization in the NIS or ANE regions.

The team leader will be responsible for the overall management of the assessment including the coordination, scheduling and assignment of team members to the tasks necessary for the completion of the assessment; coordination of team discussions of findings and conclusions; coordination of draft and final reports, and the final out brief of USAID/Afghanistan.

D. Mechanism and Management

This assessment will be carried out under USAID/Washington's Land Tenure Task Order. This Task Order is part of the RAISE IQC, contract number PCE-I-00-99-00001-00, task order number 13. The CTO for this Task Order is Gregory Myers.

The consultants will report to the CTO, and while in the field the entire team will report to Mark Meassick, USAID/Afghanistan.

METHODOLOGY

Prior to arrival in Kabul the team members should review the following background materials: USAID will provide these upon the selection of the team.

Other documents may be provided as needed upon the arrival of the team leader.

- USAID shall provide the team with names and contact information for key individuals to be interviewed in Afghanistan.
- USAID/ Afghanistan will also assist with setting up meetings, local transport, translation and other logistical requirements.

DELIVERABLES: REPORTS AND BRIEFINGS

1. The team shall conduct weekly briefings for relevant USAID officials in order to keep them current on the progress of the evaluation and to resolve any issues that may arise.
2. The team shall conduct a 'Key Client Meeting' to discuss tentative recommendations and possible action plan for implementing the recommendations. The feedback from this meeting will be part of the final report.
3. The team shall present their findings to USAID during a debriefing for all interested USAID staff at the end of the second week in Afghanistan. These findings will be presented both verbally and in a written document.
4. A final evaluation report, incorporating both comments from the debriefing and written comments received within five workdays after the debriefing from USAID Afghanistan staff, shall be completed by the team leader and submitted to USAID Afghanistan within ten workdays after receipt of the written comments from USAID Afghanistan.

The final report (not more than 30 pages) shall contain the following:

- An executive summary not to exceed one page in length. The executive summary should present the major findings, observations, conclusions and recommendations;
- An introduction and background section for the overall evaluation;
- A separate section of detailed findings and observations of the evaluation. This should not exceed 20 pages;
- A discussion of conclusions and recommendations, not to exceed ten pages. This shall include recommendations and a detailed discussion of strategic opportunities for USAID programming.

Three paper copies and three electronic copies in Word 2000 format final report should be submitted to USAID (for the CTO, the Evaluation and Contracting Officers), and should include the following Annexes:

- SOW,
- Description of evaluation methods used,
- Lists of persons contacted/interviewed,
- Bibliography of documents consulted.

WORKWEEK AND LOCAL COSTS

The consultants are authorized to work six-day work weeks, and bill for danger pay. Local costs, such as transportation, interpreter services, and other administrative costs will be covered by USAID/Afghanistan.

ANNEX 4: QUESTIONS POSED BY EAMON DORAN FOR THE EVALUATION TEAM

1. Questions for EMG Land Titling Assessment Team

Task A – Working collaboratively with counterparts, assist in the establishment of procedures for simplifying the transfer of titles within a “one stop shop”

- How is the Ghazni One Stop Shop Pilot project progressing?
- What are the positives and negatives of this effort?
- Is it a reasonable plan?
- Should other approaches or options be considered?
- How much of a savings has there been in time, cost and administrative procedures for property sellers and buyers in the new title transfer procedures?

Task B – Develop the capacity to map ownership and identify boundaries with a unique identifier, thus ensuring that the same property is not sold twice and that the land does not overlap with other properties

- Has the project been able to collaborate effectively with ISAF to obtain satellite images to assist with mapping? What is the holdup, if any?
- What are the deficiencies in the land titling process now?
- How much progress has been made in mapping out the physical location and identity of property? Where has most progress taken place, why?

Task C – While working through Afghan nationals and developing local capacity, develop a data base system for recording titles, boundaries and history of ownership

- Is the property information system publicly accessible?
- If not completely publicly accessible, who has access to this information (i.e., banks, lawyers, owners, neighbors, government officials, Parliamentarians?)
- What information is publicly accessible?
- Is there a fee charged for any information requests?
- How long does it take to obtain information?

Task D – Law consolidation

- What information can we draw from the findings of this review?
- What are the problems identified in the legal review process?
- Which laws has the project recommended to be considered in force and which should be eliminated?
- To what extent are traditional Islamic principles being considered or incorporated into EMG’s land tenure reform approach?
- What are the gaps in existing legislative framework that would promote more secure land rights?
- What legislation is needed that could leverage land rights and transform land into an economic engine of growth in Afghanistan?
- How do we bring the new Parliament into the process? Does the contractor foresee any problems with this new “actor”?
- Are the public hearings well attended? Where have they been held and what has been the outcome?

Task E – Hold conference on informal settlements in Kabul and evaluate how they can be brought into the formal registry system

- Do property owners in informal settlements perceive their tenure to be more secure?
- What was the outcome of the discussions with scholars, leading individuals, government officials and citizens?
- Have the informal settlements created any “spokespeople”? Do they feel like they have a “voice”?

Task F – Establish at least one pilot titling project

- Has the pilot titling project been completed? What are the results? Have any economic benefits of clearer title been realized?
- How did the contractor assist to establish and document title?
- In lieu of deeds, what other documentation are property owners using to prove ownership? What documentation is being recognized by the GoA? Do you suggest that other types of proof of residence or ownership be recognized? What type?
- Have any resolved disputes been registered?
- How well are the courts fulfilling their function as recorder of property rights?
- What are the best practices that have come out of this pilot program? What has not worked?
- Describe the coordination between different institutions, cadastre and municipalities, concerning rural land tenure and ownership information.

Task G – While fostering the development of indigenous conflict resolution skills, develop a pilot dispute resolution program that includes both voluntary conciliation methods and binding arbitration

- What progress has been made with regard to strengthening the informal justice system and tying it to the formal justice system with regard to resolving property related disputes AND recognition of these adjudications?
- Who are the land disputes generally between?
- Are returned Afghan parties in disputes? How often?

- What is the capacity of courts to address the disputes?
- How many claims are there?
- How many claims have been resolved?
- How many claims are unresolved?
- How many deeds have been recorded?
- How many deeds still need to be recorded?

Task H – Develop a woman’s legal defense pilot program based on property rights in Islam

- What is the current climate for this type of activity and should it be pursued?
- Has a strategy and program been developed to address women’s property rights? What is it? Does the assessment team agree with this approach?
- Where has the pilot project been successful? Where has it not been successful and what are the impediments?
- What are some of the most common problems that women face?
- Is the current project design or contractor approach addressing these issues?
- What are the results of the pilot project in Badakhshan? Can this be duplicated elsewhere? Where does the contractor think the most resistance will be found?
- Are Afghan women in general supportive of this program?
- How strong are custom and tradition as factors to progress related to this issue?

Task I – Reorganization of property deed archives kept in Makhzans in Kabul, Kandahar, Herat, Mazar-I-Sharif, and one or more regional centers such as Shibgergen, Kunduz, and Jalalabad

- Was the survey methodology for Makhzan reorganization well thought out? How can it be improved? What are its deficiencies?
- How many offices have been rehabilitated, equipped and had storage facilities constructed? How much has this cost?
- How many deeds have been sorted? How many deeds could not be found? What is the extent of lost deeds? What are the most common reasons for lost deeds?
- Does the centralized digital system to manage land documents have a secure back up system?
- What security measures have been taken to insure limited access and the ability to “compromise/corrupt” the information?

General Questions:

- 1) Has the contractor achieved all of the objectives under each of the Tasks A-I? If so, what is the assessment team’s rating of their work? If not, why has the contractor not met the objectives and is the explanation reasonable? Is the objective reasonable? What must the contractor do to meet the objective?
- 2) How can the EGO more tightly weave this work into our other project efforts (i.e., but not limited to SME development, ACAP, DEG, industrial parks development, association development)?
- 3) Are there any IMF or WB conditions that are impeding the project’s success?

- 4) Has the project done a good enough job with building capacity among counterparts and at the host country level?
- 5) How do the government counterparts and other donors rate: 1) the quality of work, 2) direction of program, 3) achievements of the contractor, 4) cooperation of the contractor (i.e., sharing information, not duplicating efforts)? Ask for explanations/examples/justifications to support their claims.
- 6) Do the government counterparts and donors think the contractor is taking adequate initiative to address identified gaps in the privatization process? Ask for explanations/examples/justifications to support their claims.
- 7) Which government counterparts are the contractor's biggest supporters and biggest critics? What type of bridge building needs to be commenced to repair relationships?
- 8) What are the most common land tenure issues for urban and rural land owners?
- 9) Should the project begin to focus more on rural land issues?
- 10) Does our effort in industrial park development hinder our efforts by creating a "moral hazard" which may cause the perception by some that the urgency for reform in this area is lower due to the presence of industrial parks as an answer to land security?
- 11) What is the potential for land (rural and urban) being a major flashpoint in the future?
- 12) How do Afghan citizens perceive the work of the contractor? Do they see any benefits accruing to them yet or in the future?
- 13) What are their concerns and suggestions?
- 14) Are judges equipped to deal with this issue? Should training be focused on judges?
- 15) How large of a problem is corruption with regard to registering deeds? How much does it cost, officially and unofficially, to register property?
- 16) Does the government plan to address this problem? How?
- 17) Should/can the project address it?
- 18) What is the general feedback from banks about progress with land titling reform? How about businesses? What are their recommendations and concerns?
- 19) How often do the ex-pat experts go on site visits inside and outside of Kabul?
- 20) How are pilot activities managed? Is the current manner appropriate?
- 21) Is the contractor making a concerted effort to manage pilot activities outside of Kabul?
- 22) Ask the contractor what they think could be improved with their work and with the design of the project?
- 23) Is the current scope of work appropriate?
- 24) What changes does the assessment team suggest?
- 25) How would the assessment team rate the work of the contractors?

Reading Material for Team:

SOW; Annual Work Plan, AF National Development Plan, relevant legislation, AREU publications

2. Questions for EMG SOE Privatization Assessment Team

Task A – Working collaboratively with government counterparts, assist in the design of a social safety net program for SOE employees who will be made redundant by privatization or rationalizing staffing levels. This activity is likely the most important policy development issue that needs to be undertaken within the framework of supporting the MOF SOE General Directorate

- What redundancy options has the contractor proposed? How do you rate them?
- How will the redundancy program be funded? When will it start?
- How (or should) funds from divestiture be used for addressing the social safety net issue?
- Has the contractor developed a plan to invest net financial proceeds from SOE assets? What is the assessment team’s evaluation of this plan?

Task B – Design a public outreach program to increase awareness and acceptability of disposition of SOEs (work with universities, think tanks, national and regional business associations, and local NGOs)

- What is the feedback from discussions of government officials, individuals about SOE privatization? What problems are of most concern for them? What are solutions to mitigate the concerns?
- How effective was the educational media program about SOE privatization?

Task C – Working closely with counterparts, establish preparatory procedures for disposition of assets

- How far has the contractor gotten with the inventory of SOEs? How many have been categorized into each group – liquidation, privatization or corporatization?
- Is corporatization a good option to pursue?
- Should we be giving greater consideration to employee buy-outs or asset transfer?
- What type of SOE information has been collected?
- Have valuation procedures been devised? What methodology is being used? Is it objective and appropriate?

Task D – Working collaboratively with government counterparts, private sector counterparts and other stakeholders, assist in the development of a detailed strategy, implementation procedures and methods of disposition for each class of SOEs (including traditional SOE production industries as well as service SOEs such as banks and insurance entities, and excess agricultural land owned by SOEs)

- How many firms have been classified as viable and non-viable?
- How can this SOE privatization component be more closely linked with other EGO efforts in SME development, land titling industrial park development, and ACAP venture capital projects?
- Have privatization procedures been established? Have they been approved?
- Are the corporatization procedures developed by the contractor considerate of foreign and individual players and do they meet international standards?
- Is the media plan for SOE privatization effective? What is the feedback from local Afghan business community? Who is being targeted? Who usually responds?

- What are the results of the analysis that was to be conducted under Task D.8 related to cash sale of excess agricultural land?

Task E – Establish essential institutional infrastructure

- What role did EMG play in drafting the Business Organization Law? Does the law meet minimum international standards of corporate governance?
- Have audit and accounting standards meeting minimum international standards been drafted? Have laws creating the legislative foundation for these standards to be used been passed?
- What is the status of securities law, bankruptcy law, collateral law, leasing law, anti-trust/anti-monopoly laws? Are there other commercial laws that need to be drafted and passed that you think are important? Which laws?
- How do you find the legislative drafting and approval process?
- What is the local capacity to draft laws?
- What is your relationship with the Taqin like?
- How closely does the contractor work with the Afghan Investment Support Agency (AISA)? What type of assistance is provided?
- What is the capacity of AISA and Industrial Park Development Authority (IPDA) to manage an industrial park development strategy and individual IPs?
- What information has come about of the training needs assessments? Where are the biggest needs of government, business and business related organizations?
- Can you tell us about the IT needs of the SOEs?

Task F – Design an enterprise support program for privatized and corporatized firms

- Has any work been done to create a skills development program?
- Has the contractor contacted the CAR mission to discuss its EdNet (Business Education) program?
- Has any work been conducted to strengthen the business curriculum and delivery at the university level?

Task G – Provide technical assistance and support, as called upon, to a team of local professionals who will complete the following activities

- Has the contractor created “fact sheets” and other information tools for each enterprise?
- Has a timeline been developed and approved? Is it appropriate? Should it be faster?
- What type of marketing information has been prepared to assist the divestiture process?
- How does the assessment team rate the marketing information, fact sheets, and efforts?

Task H – Tendering & Task I – After the sale

- Explain the tendering process? Does it meet minimum international standards?
- What efforts are being made to publicize the process?
- Where (country) is the most interest from?
- Should the contractor think of other target audiences for SOEs? Who/Where?
- Should other strategies be used to attract interest for the SOEs?

General questions:

- Has the contractor achieved all of the objectives under each of the Tasks A-I? If so, what is the assessment team's rating of their work? If not, why has the contractor not met the objectives and is the explanation reasonable? Is the objective reasonable? What must the contractor do to meet the objective?
- How can the EGO more tightly weave this work into our other project efforts (i.e., but not limited to SME development, ACAP, DEG, industrial parks development, association development)
- Has the project done a good enough job with building capacity among counterparts and at the host country level?
- Is the current scope of work appropriate?
- What changes does the assessment team suggest?
- How would the assessment team rate the work of the contractors?
- How do the government counterparts and other donors rate: 1) the quality of work, 2) direction of program, 3) achievements of the contractor, 4) cooperation of the contractor (i.e., sharing information, not duplicating efforts)? Ask for explanations/examples/justifications to support their claims.
- Do the government counterparts and donors think the contractor is taking adequate initiative to address identified gaps in the privatization process? Ask for explanations/examples/justifications to support their claims.
- Are there any IMF or WB conditions that are impeding the projects success?
- Ask the contractor what they think could be improved with their work and with the design of the project?
- What are the most common privatization issues the contractor faces? How do they propose to resolve them?
- Does the contractor have a plan for how to address the land issues associated with privatization of SOEs? Is it a reasonable plan? Does the assessment team have any recommendations?
- What is the potential for privatization of SOEs being a major flashpoint in the future?
- How do Afghan citizens, and SOE employees, perceive the work? Do they see any benefits accruing to them yet or over time?
- What are their (afghan citizens) concerns and suggestions?
- How large of a problem is corruption with regard to privatization?
- Should/can the project address it?
- How often do the ex-pat experts go on site visits inside and outside of Kabul?
- How are pilot activities managed?
- Is the contractor making a concerted effort to manage pilot activities outside of Kabul?
- Does the Evaluation Team see a need for a project focused on industrial development? If so, what recommendations does the Evaluation Team have for components of this project and how should USAID approach it?

Reading Material for Team:

SOW; Annual Work Plan, AF National Development Plan, relevant legislation, AREU publications

ANNEX 5: LIST OF THE RELEVANT PROPERTY LAWS, DECREES AND REGULATIONS REVIEWED BY THE ASSESSMENT TEAM

	NAME OF LAW, DECREE OR REG.	OFFICIAL GAZETTE #	STATUS
1	Decree of the President of Islamic transitional state of Afghanistan on properties	O.G.816, Jan 5, 2005	In force
2	Regulation on Distribution and sale of state owned residential apartments	O.G. 798, 1422 Lunar year	In force
3	Land Survey and Statistics Law	13 Jawza 1344	In force
4	Law on Land Expropriation	O.G.794, 2000	Amended
5	Decree of President of Islamic Republic of Afghanistan in regard to amendment of some articles of Law on land expropriation	O.G. 849, 1384	In force
6	Regulation on Housing affairs of urban project under Kabul Master Plan	O.G. 794, 2000	In force
7	Regulation on the distribution and sale of residential, commercial and State owned high rise buildings in Kabul city	O.G. 794, 2000	In force
8	Regulation on sanitation and greenery of cities	O.G 794, 2000	In force
9	Decree of President of interim administration of Afghanistan on the ban of the distribution of state owned deed lands	O.G. 802, June 18, 2002	In force
10	Law on Cadastral Survey	O.G. 674, Sept. 12, 1988	In force
11	Law on Land Management	O.G. 795, 2000	In force
12	Law on Property Dealers	O.G. 786, 1999	Amended
13	Decree of the President of the Islamic Transitional State of Afghanistan in regard to the amendment and omission of some articles of law of property dealing agencies	O.G. 837, Sept. 2004	In force
14	Regulation relating to AGCHO		In force
15	Annex to the AGCHO regulation		In force
16	Regulation on the implementation of the Kabul Master Plan	O.G. 794, 2000	In force
17	Decree of the President of the Interim administration of Afghanistan on the	O.G. 802,18	In force

	NAME OF LAW, DECREE OR REG.	OFFICIAL GAZETTE #	STATUS
	ban of the distribution of state owned property in violation of the Kabul Master Plan	Jan 2002	
18	Regulation of agricultural administration on provincial land reform	O.G. 597, 1364	Repealed
19	Law on regulating land reform relationships	O.G. 658, 1366	Repealed
20	Regulation on land lease	O.G. 659, 1366	
21	Law on private investment for the renovation of state owned mowat lands	O.G 700, 1367	Repealed
22	Law on pasture land	O.G. 759, 1421	In force
23	Law on survey, settlement and registration of lands	O.G. 346, Sept 22, 1976	Repealed
24	Decree # 105 date 18.5.1419 on Zolyadi	O.G. 788, 1420	Repealed
25	Decree # 495 dated 13.3.1420 on hearing civil litigation	O.G. 788, 1420	In force
26	Decree # 26 dated 13.4.1420 in regard to properties (imlak)	O.G. 788, 1420	Repealed

LAWS RELATED TO LAND TENURE AND PROPERTY RIGHTS IN AFGHANISTAN

SUBJECT	LAWS	RELEVANCE
Restriction of Ownership	Civil Code Articles 1900; 1904; Decree on the Distribution and Sale of Residential, Commercial and State Owned High Rise Buildings in Kabul, Chapter II, Paragraph 5, Article 22, Article 9 and Article 14	Deals with the restriction of ownership in state distributed lands. The legislation recognizes ownership and empowers the owner to utilize, exploit and exercise rights on his own property in light of limits set by the Kabul Municipality [the provisions of these laws have been violated by the persons in the informal settlements].
Statute of limitations in various kinds of disputes	Civil Code Article 966, Commercial Code Articles 538, 582, 942, and 965	These articles deal with the timeframe within which cases may be brought to court where the issue involved immovable property.
Joint ownership	Civil Code Articles 1935, 1951, 1953, 1963, 1992, and 1995; the Mojal-ul-Ahkam Articles 1222 and 1223	These articles deal with the legality of having joint ownership and the process for dividing jointly owned land. When jointly owned land is being divided, it is required that (1) all owners of the jointly owned land are present when the division is taking place; (2) all joint owners must consent to the division; (3) if there is an infant, the administrator of the infant must be present; and (4) the property must be divided in an equitable and fair manner.
The validity of customary and other documents used for verification of ownership when the land is being surveyed	Law on Land Management, O.G. 795, 2000, Article 4 paragraphs 1-7, and Article 6; Law of Survey, Settlement and Verification, O.G. 346 of Sept. 1976, Articles 47, 48, and 51; Presidential Decree No. 83 of 2004, O.G. Jan 5. 2000, Article 7, para 2	There are three sequential laws relating to the proof of ownership. The Presidential Decree of 2004 supersedes the other two laws and states that the only document that can be used to prove ownership is a valid legal deed.
The sale, distribution and transfer of land by the government to individuals	Presidential Decree No. 83 of 2004, O.G. Jan. 5 2000, Articles 1, 12; Regulations to the decree, Article 4, paras 1 & 2, Article 25 para 2, Article 3 para 2, 5; Regulations to the Presidential decree O.G. 21, 12.7.2004, Articles 6, 7, 8, 11, 14, 15, 16, 17, 18, and 20	The sale, distribution, and transfer of land is a very complicated transaction and involves many aspects of the law. The project is currently attempting to simplify the process.
What sort of land the government may sell and distribute	Law on Land Management, Article 43, 87 para 5, para 6, 88, para 2, 89.90, para 1, 91 paras 1 & 2, 93, paras 1-6, 95 paras 1 & 2, and 97	In Afghanistan, all lands except those for which ownership of individuals has been proven legally by proving that ownership with a valid legal document are state lands. Therefore, under the existing law, the government may sell and distribute all lands including publicly owned lands, pasture land, virgin land, arid land, state-owned land, endowed land, and agricultural land.
Land grabbing	Regulation on Methods of Sale of Residential, Commercial and State Owned High Rise buildings in Kabul City, O.G. 794, 25.6.2000, Article 24; Regulations on Housing Affairs of Urban Projects of the 25-year Plan for Kabul City, O.G. 794, Article 6, and 13; Presidential decree No. 83, O.G. 816, 1.16.2004, Article 14 para 1 and 16; Law on Municipalities, O.G. 794, 2000, Article 16 para 37	Under the laws and regulations relating to land grabbing, two things stand out: (1) the ban on land grabbing is not strong and explicit; and (2) the governmental organs which should be responsible for the prevention of land grabbing have not been defined.
Easements	Civil Code, Articles 2340 to 2368	The provisions on easements in the Civil Code present the law of easements in a way that is generally accepted in countries with a legal tradition similar to Afghanistan. The rights are all defined and provided for in a set of clear and concise provisions.
Expropriation	Law on Land Expropriation, O.G. 794, 2000, 23 articles; Regulation on Housing Affairs, O.G. 794, 2000	The law is administered through the Council of Ministers. However, the authority to deal with expropriation exists in three institutions: Ministry of Urban Development and Housing, the Municipality of Kabul, and the Cabinet.
Building Standards	There is no specific law in the area, but there are some Civil Code articles which relate. They are Civil Code Articles 1908, 1929, 1930, 1931, and 1932	In general, the standards have been imported from Russia.

ANNEX 6: LTERA PROJECT OFFICES AND STAFF

LTERA PROJECT OFFICES AND STAFF			
Office	Dedicated Office	LTERA Afghan	LTERA Expat
AGCHO		Being Recruited	Being recruited
MoF		8	2
			Richard Bernstrom
			Robin Johnson
MAAH			Greg Cullen
Amlack			Bastiaan Reydon
Kabul Makhzan and Appeals Court		5	
Ghazni Field Office		1	Amir Khan
Ghazni (Makhzan)		3	Amir Khan
Kabul Municipality		2 being recruited	Tressan Sullivan
Cadastral	To Open in March 06	2 being recruited	1 - same as AGCHO
District 7		3	
District 13		1	
Kabul Municipality Archive		2	
Other Stakeholder working relationships			
KURP		2	Regular input from Land Titling component
MUDH		2	
Ongoing Makhzan Rehabilitation			
Badgis	2 to 3 months in 06	2	Regular input from Land Titling component
Baglan	2 to 3 months in 06	2	
Paktiya	2 to 3 months in 06	2	

ANNEX 7: EMG REPORT ON THEIR COLLABORATION WITH OTHER USAID PROJECTS, OTHER DONOR PROJECTS AND THE GOVERNMENT OF AFGHANISTAN

A. OTHER USAID PROGRAMS

1. LTERA is working with USAID Competitiveness Project to mobilize public/private support for reduction of the Real Property Transfer Tax.
2. LTERA reorganizes Court Makhzans in provinces in coordination with the reconstruction work plan of PRT and the Rule of Law Project.
3. LTERA is providing coordination support to the MoJ with respect to the activities of the Working Group on Land Policy. The Working Group consists of representatives from both the GoA and from donor organizations. Included in the Working group is a representative from the Rule of Law Project and from RAMP/USAID.
4. Linked with RAMP in development of rural finance policies.
5. Linked up with Land O'Lakes dairy project to facilitate cooperation between their project and the privatized sugar beet factory, and try to develop business partnerships.
6. Provided input into RAMP review mission from USAID.
7. Liaison with Glenn Tasky, Bearing Point advisor at D' Afghanistan, on development of the insurance industry and privatization of Afghan National Insurance Company.
8. Ongoing coordination with David Altus Garner, USAID-funded advisor to the Minister of Mines & Industry, concerning the privatization of SOEs in the jurisdiction of MMI.
9. Coordination with David Grizzle, Afghan Reconstruction Group (ARG) advisor at the Ministry of Transportation.
10. Coordination with Jane Wiegand, ARG advisor on privatization, particularly with regard to potential cement industry investors.

B. OTHER DONOR PROGRAMS

11. LTERA coordinates with the National Geospatial Intelligence Agency and ISAF for the production of satellite images required for the development of the project and for the capacity building of the GIS staff of AGCHO.
12. LTERA has assisted AGCHO in preparing its restructuring plan for the World Bank SEPAP project (PRR).
13. LTERA is working closely with a local NGO to deal with the issues of tenure and basic services in an integrated manner.
14. LTERA is coordinating its work on urban land tenure issues with the World Bank-funded KURP project.
15. LTERA is providing coordination support to the MoJ with respect to the activities of the Working Group on Land Policy. The Working Group consists of representatives from the MoJ, LTERA, Rule of Law Project/USAID, MUDH, KURP, Coalition Forces, Italian Embassy, UNAMA, UNHABITAT, an Independent Consultant, RAMP/USAID, UNDP, and NRC. Besides LTERA, as a coordinator of the WG, has been making targeted consultations with other governmental and non-governmental organizations as well.
16. LTERA shares research information with AREU.
17. LTERA coordinates its works on informal settlements with the Agha Khan Foundation.
18. LTERA invited multilateral donors and other USAID contractors to attend several presentations on our social safety net proposal for the employees of the State Owned Enterprises.
19. LTERA invited multilateral donors and other USAID contractors to attend a presentation on results of the bank diagnostic assignment in summer 2005. We coordinated with Bearing Point advisors at Da Afghanistan Bank to obtain information needed for the diagnostic.
20. Worked with BearingPoint advisors, Malik Mortaza and Teymour Salaam, on the development of legislation for the development of industrial parks and appropriate sales contracts for IP parcels.
21. Ongoing coordination with Khalid Sekander of the Rule of Law Project to stay abreast of legislative developments.
22. Discussions to share experiences on creating a corporation out of State Owned Enterprises with Tony Loda, telecomm expert with the BearingPoint Economic Governance Project who has been involved in the creating corporations in the area of Afghan Telecom.
23. Work with ADB policy project to develop joint approach to liquidation of Fertilizer & Agro-Services Enterprise, including development of approach to fertilizer and agrochemicals regulation in conjunction with ADB project (Herschel Weeks) and the IFDC project under RAMP/USAID (Jerry Turnbull).
24. Cooperation with USDA/CNFA project providing grants to agribusinesses: provided referrals information point at Ministry of Agriculture Private Sector Department.
25. Cooperation with several projects on preparation of Agriculture Master Plan, including RAMP, EC Horticulture Project, EC Livestock Project; FAO food safety & nutrition project, FAO/EC seed project; OTF/USAID Competitiveness project on preparation of the horticulture section to the Master Plan.
26. Developed privatization initiatives with EC/FAO seed project on NGO seed production operations.

27. Linked with WFP and others to formulate food security overview in connection with silo privatization.
28. Linked with JICA on development of program for rehabilitation of laboratories in the Ministry of Agriculture.
29. Provided input into National Seed Policy and draft Seed Law as prepared by FAO/EC seed project; reviewed texts and provided corrections and amendments.
30. Coordination with ADB-funded consultants with regard to valuation and privatization of Helmand Construction Company.
31. Coordination with Karine Fourmond, World Bank water industry consultant, concerning the setting up of a corporation and future development of Central Water & Sewerage Supply (CWASS) and development of Kabul municipal water supply.
32. Coordination with World Bank-funded advisors at Brishna Organization, the electric utility.

C. GOVERNMENT OF AFGHANISTAN

33. LTERA is working closely with the Municipality of Kabul and its district offices towards incorporating informal settlements to the city's planning process. LTERA is also providing the Municipality with technical assistance related to informal settlements and other planning matters.
34. LTERA is working closely with communities which are part of the governmental structure to deal with the issues of tenure and basic services in an integrated manner.
35. LTERA is coordinating its activities in regard to urban land tenure issues with the MUDH.
36. LTERA is providing coordination support to the MoJ with respect to the activities of the Working Group on Land Policy. Besides LTERA, as a coordinator of the Working Group, has been making targeted consultations with other governmental [like MUDH] and non-governmental organizations, as well.
37. LTERA coordinated with various interested parties that prepared the ANDS urban sector component including MUDH, UNHABITAT, the Ministry of Interior, Agha Khan Foundation and AREU.
38. LTERA liaises with the Civil Service Commission to harmonize the Social Safety Net for employees in State Owned Enterprises with the benefits to other public sector employees under the PRR plan.
39. LTERA worked with AICC and Afghan Traders & Industrialist Center to organize investor workshops in early 2006. We prepared a presentation for the European Investor Road Show scheduled for February 1 to 9, 2006, organized by AISA together with European industry associations and European embassies in Kabul.

ANNEX 8: INITIAL CHART OF FINDINGS AND ACCOMPLISHMENTS

ACCOMPLISHMENTS		ISSUES	RECOMMENDATIONS
I Vision			
1	Good understanding of land tenure and specific issues related to urban land	a) Not broad enough understanding of tenure issues particularly in rural areas	Comprehensive vision needs to be articulated
		a) No global perspective on how component activities fit together which limits the realization of the full potential of the project b) Lack of vision limits the ability to integrate the two separate components of the project	Develop a strategy to achieve the vision Demonstrate how project activities related to vision Outside TA recommended
		a) Inaccurate understanding of difference between public, state, common and private land	(30-45 days)
II Program Design			
1	Contractor closely followed designated tasks of the scope of work		Contractor/USAID review of scope of work
2	Raised sensitivities to alternative methodologies for dealing with issues related to informal settlements	a) Alternative methodologies/discussion on different tenure forms is too limited (e.g., formal vs. informal sectors, leases, riparian and pasture rights and other tenure scenarios)	Create a framework that recognizes the different alternative models that provide tenure security and promotes economic growth
3	Good background studies for project implementation	a) Lack of efficient dissemination of this information b) Modeling lacks comprehensiveness	Improve dissemination of information
4	Move discussion beyond deeds recording to broader land tenure issues	a) Failure to properly sequence and prioritize project activities	Commence discussion to move toward title registration system
		a) There is no land policy framework b) There is no process for developing a land policy framework	Develop a process for a comprehensive land policy framework

ACCOMPLISHMENTS		ISSUES	RECOMMENDATIONS
		a) No articulated methodology for linking cadastral system with proposed title registration system	Initiate conversion of existing cadastral plans and records
		a) Lack of plan for a national spatial data set	Work with relevant government agencies to define national standards for core data sets of land information systems
III Communication/Administration			
1	Foster interest within government and selected public interest groups (e.g., informal settlement conference)	a) Limited public outreach (focus on privatization) b) Lack of cross ministerial discussion about land/property rights issues	<ul style="list-style-type: none"> ◆ Promote ministerial ownership ◆ Build champions of reform ◆ Strengthen media and information exchange
2	Initiated review of project administration	a) Insufficient internal communications and document management within and between project components b) Too much top down management c) Project organization is loose	Develop better project management tools and procedures
	More attention paid to discussion of issues raised by individual experts	a) Inadequate external communication with GoA, USAID, and Afghans leading to misunderstanding within government creating unrealistic expectations	<p>Manage expectations</p> <p>Clarification of role of TA in government offices</p>
IV Program Implementation			
1	Successfully reorganized 16 of 34 Makhzans ahead of schedule	a) Insufficient articulation of a strategy for building a national property rights records system (Task B) b) Establishment of a digital base is lagging	Develop a strategy for building a national property rights record system including resources and timing for implementation
2	Effective groundwork for the establishment of a viable pilot project in a provincial setting (Ghazni)		<p>Accelerate data entry activities</p> <p>Commence testing of One-Stop-Shop in Ghazni (monitor and report on efficacy)</p>
3	Inventory and survey of SOE land	a) Due diligence relies primarily on oral communication (management of SOE) b) Pilot project on SOE land ownership began late (primary source of ownership) c) Lack of consideration of the possibility of prior land rights d) Lack of consideration of alternative options to privatization	<p>Increase awareness of political, social, and economic issues related to privatization</p> <p>Enhance linkages between components</p> <p>Clarify owner issues prior to liquidation</p> <p>Develop models of privatization (e.g., lottery vs. highest bidder)</p>

ACCOMPLISHMENTS		ISSUES	RECOMMENDATIONS
V Institution Building			
1	Obtained commitments to provide support from ISAF and USNGA for project activities (satellite imagery and maps)		Assign a project advisor to the ANDS to ensure that land issues are considered across the three pillars
2	Identified and assessed the capacity and responsibilities of related government institutions and agencies		
3	Established physical presence in GoA Offices	a) Insufficient clarity of plan and activities for institutional strengthening	
4	The project is an economic growth activity and has also successfully raised issues related to governance	a) Have not successfully integrated EG and Governance activities	Embed project activities in PRR structure
5		a) Limited linkage between spatial data of cadastral offices and property data of the Makhzan	Commence activities to establish a parcel based registration system

ANNEX 9: STRATEGY PAPER FOR YEARS TWO AND THREE

AFGHANISTAN LAND TITLING AND ECONOMIC RESTRUCTURING PROJECT STRATEGIC PLAN FOR YEARS 2 AND 3

Land allocation and uncertain property rights over land are commonly cited in Afghanistan as the most severe bottlenecks to economic activities – both formal and informal. This strategic plan provides an architecture for land titling activities in order to achieve the ultimate goal of increasing economic growth in Afghanistan. All goals, work streams and tasks included in this document are grouped together within this framework to create a cohesive land titling and land administration reform program for the people of Afghanistan. In collaboration with USAID and our counterparts within the GoA and the private sector, the LTERA team will implement this framework in years two and three of the Project, ensuring that all land titling activities work toward the common purpose of increasing tenure security. This document contains our strategic framework, overarching themes and strategies for each specific work stream. Phase two of this document is forthcoming and includes a detailed work plan and monitoring plan that will guide our activities moving forward.

FRAMEWORK

The LTERA Project will increase economic growth through improved tenure security for land holders in order to create an environment that attracts investment and supports homeowners and farmers. This will be achieved through the development of an efficient, transparent and sustainable land administration system.

The overall strategic framework of this project is illustrated in the diagram below. The project goals determine the market indicators, which lead to individual tasks. Each task cuts across the others supporting their implementation and moving forward together. These tasks are outlined in the following section.

All project tasks lead to the same overarching themes that serve as the foundation for our work. These foundations include:

- Develop a system that improves land tenure security for the majority of Afghans;
- Establish a framework that empowers Afghans to resolve inequities which currently exist in the system; and
- Generate sustainable, systemic change through capacity building of Afghans and creating Afghan ownership of the systems developed under LTERA.

STRATEGY

LTERA will focus on five major work streams:

- **Tenure Regularization:** Work with the Municipality, MUDH, local communities, and NGOs to bring the informal settlements into the formal property system and develop a process for the adjudication of titles.
- **Property Registration:** Work with the Supreme Court to create an effective, streamlined, affordable, and transparent registration process.
- **Land Law Development:** Work with the MoJ to develop land law based on a clear understanding of the legal situation in urban and rural sectors.
- **Property Mapping:** Work with the Geodetic and Cartographic Agency, public and private sector agencies which produce and use parcel maps, to integrate their activities with the land titling and registration process and develop capacity to produce maps linked to deeds.
- **Capacity Building:** Improve the capacity of Afghans and empower them to own the land administration system and manage its operation and improvement over time.

ACTIVITIES

Tenure Regularization

A. Work with the Municipality, MUDH, local communities and NGOs to incorporate informal settlements into the formal urban planning process.

Specific activities:

- Based on experiences gained from District 7 pilot neighborhoods, propose a methodology by which informal settlements can be brought into the formal urban planning process.
- Develop and test an improved community mobilization and tenure upgrading methodology in District 13 pilot neighborhood in Kabul.
- Using the methodology developed in District 7, implement regularization of property rights in Districts 7 and 13 neighborhoods in Kabul.

- Work with the judicial system and community groups to improve informal dispute resolution mechanisms and to link them to the formal justice system.
- Develop foundations for rolling out findings and methodologies of improving tenure security in informal settlements.
- Work closely with MUDH, municipalities, local communities and NGOs to roll out an integrated and participatory methodology of upgrading physical infrastructure and tenure security in informal settlements.
- Build the capacity of MUDH, Municipality of Kabul, communities, community associations and other partners with respect to addressing problems relating to tenure security and informal settlements.

B. Develop a property adjudication system in informal settlements.

Specific activities:

- Develop standards by which customary deeds and other de facto property rights may be validated and recorded in the formal registration system.
- Develop and test community-based adjudication system to validate customary deeds and determine the integrity of formal deeds.
- In collaboration with MUDH, Project Management Unit of the World Bank-funded KURP Project, major municipalities and local community leaders, develop policy and recommendations for legislative measures for improving tenure security in informal settlements.

Property Registration System

A. Reorganize legal documentation and develop documentation system that provides transparency, safe keeping of deeds, and easy accessibility to the public.

Specific activities:

- Reorganize Court Legal Document Archives.
- Rehabilitate Court Archive document storage space.
- Digitize deeds for easy accessibility and safe keeping.
- Computerize documentation index.
- Create manual and computerized mechanisms that facilitate speedy transaction and search process of deeds.
- Develop Documentation System that provides easy accessibility to the public.

B. Work with the Supreme Court and the MoJ to streamline existing property registration process and establish an effective, efficient, transparent and affordable system.

Specific activities:

- Propose immediate adjustments to improve property transfer and registration process and to build certainty in the system.

- Facilitate coordination and communication between government bodies to achieve a consolidated, transparent, affordable, and efficient registration system.
- Pilot test a consolidated registration system in Ghazni to demonstrate streamlined and consolidated property adjudication and registration system.

C. Improve land tenure administration of rural land within the Ministry of Agriculture.

Specific Activities:

- Assess the current land administration practices in the rural sector and identify gaps and difficulties.
- Reorganize the management of the rural land in AMLAK (Property Department) starting from existing documentation in coordination with the Cadastre Department.
- Enhance the capacity of the Ministry of Agriculture to administer and further develop an enhanced land administration of private and public land.
- Propose mechanisms adapted to the problems of the rural sector to improve land tenure security and adjudicate / register property rights.
- Participate in the preparation of a land policy and land laws.

Land Law

Work with the MoJ to develop a land policy leading to land law based on a clear understanding of the legal situation on the ground.

Specific Activities:

- Examine existing laws to identify gaps and deficiencies, and propose interim and long-term amendments.
- Co-organize a workshop with the MoJ and other stakeholders aiming at determining immediate legal changes.
- Work with a Working Group in the MoJ to develop an equitable land policy to support economic growth, encourage investment and improve land equity.
- Facilitate formulation of both interim government policy on improvement of stability in land and implementing legislation, including anti-eviction and adverse possession.

Property Mapping

A. Establish standards for geographical information systems to support activities aimed at regularizing or clarifying property rights.

Specific activities:

- Based on experiences gained from mapping activities in pilot informal settlements, determine the most cost-effective mapping technique to clarify property rights.
- Provide technical assistance to MUDH and the Kabul Urban Reconstruction Project (KURP) with respect to mapping to be used for informal settlement upgrading project.

- Develop quality control procedures for structured data collected in pilot areas.
- Improve the existing system for assigning a unique property identification number to each property (parcel of land or condominium unit with established boundaries and identifiable owner(s)).

B. Work with AGCHO, other relevant agencies and the private sector to develop capacity to produce parcel maps with indexes linked to the deeds pertaining to the mapped parcels.

Specific Activities:

- Assist AGCHO/Cadastral Department to enable them to appropriately respond to the mapping needs for improving tenure security in informal settlements and clarification of property rights throughout the country.
- Work with the Municipality of Kabul and other institutions to share the cost of preparing addressing systems and index maps.
- Develop modern and inexpensive technologies for cadastral mapping.
- Build local capacity in producing base mapping information (orthophoto).
- Develop local knowledge on property-related GIS system.

Capacity Building

The objectives of capacity-building initiatives include a) ensuring sustainability of results, including creating capacity to adjust systems as conditions change; b) developing replicable pilot systems so that implementation can continue after project funding has finished; c) supporting necessary institutions to monitor results and recommend further change; and d) establishing capability to resolve legal issues, including challenges to newly established systems.

A. Train counterparts in national and municipal government institutions (e.g. Supreme Court, local courts, MoJ, MUDH, Kabul Municipality Planning Department, AGCHO, cadastral offices, Makhzans, etc.) as well as non-governmental organizations (e.g., *shuras*). Conduct training in training center in Kabul, and in on-site locations in provinces, as appropriate.

Specific Activities:

Train counterpart organizations to:

- Establish databases (e.g., digitized deeds).
- Establish consolidated land administration offices (e.g., Ghazni).
- Develop low-cost land administration techniques (e.g., mapping).
- Develop procedures for resolving property rights issues (determination of fraudulent deeds, resolution of boundary disputes, resolution of inheritance disputes, replacement of lost or stolen deeds, etc.).
- Upgrade informal settlements' infrastructure and tenure situations.

B. Train Afghan trainers so that training can continue after the end of the project funding. After a pilot test has been conducted successfully, most rollout activities can be conducted using Afghan staff. Make use of various forms of training, including:

- Formal classroom training
- On-the-job training
- Secondment of personnel
- Participant training (study tours) outside Afghanistan
- Development of self-administered training materials
- Performance-based grants.

RESULTS:

3 Years After Project Startup

- Coherent and clear land policy and appropriate legal framework in place.
- Established standard by which informal property rights would be regularized.
- More streamlined, effective, affordable, transparent and efficient registration process.
- Developed and demonstrated digitized pilot property deed system including boundary description.
- Trained Afghan personnel to operate database and digitized system.
- Completed reorganization and rehabilitation of Makhzans in 17 provinces and trained Afghans to complete the reorganization of the remaining Makhzans in 17 provinces.
- Establish a legal basis for linking the informal justice system to the formal judicial system.
- Development on pilot basis of low-cost methodology of property mapping that can be used by Afghans.
- The mapping agency able to make aerial digital photography and trained in producing rectified photos from digital photographs.

5 Years After Project Startup

- Improved dispute resolution mechanisms for property related cases both at the community level and the formal judicial system.
- Trained relevant personnel at MOJ, MUDH, the Municipality and the court system on implementation of land law.
- Rolled out consolidated land administration offices in 17 provinces.
- The Afghan Government assumes responsibility for implementation of tenure security upgrading projects.

- AGCHO becomes self-supporting mapping agency.
- Increased investor confidence in security of property rights.
- Reduction of corruption in land administration and land transactions.
- Clearly defined property rights.

U.S. Agency for International Development
1300 Pennsylvania Avenue, NW
Washington, DC 20523
Tel: (202) 712-0000
Fax: (202) 216-3524
www.usaid.gov